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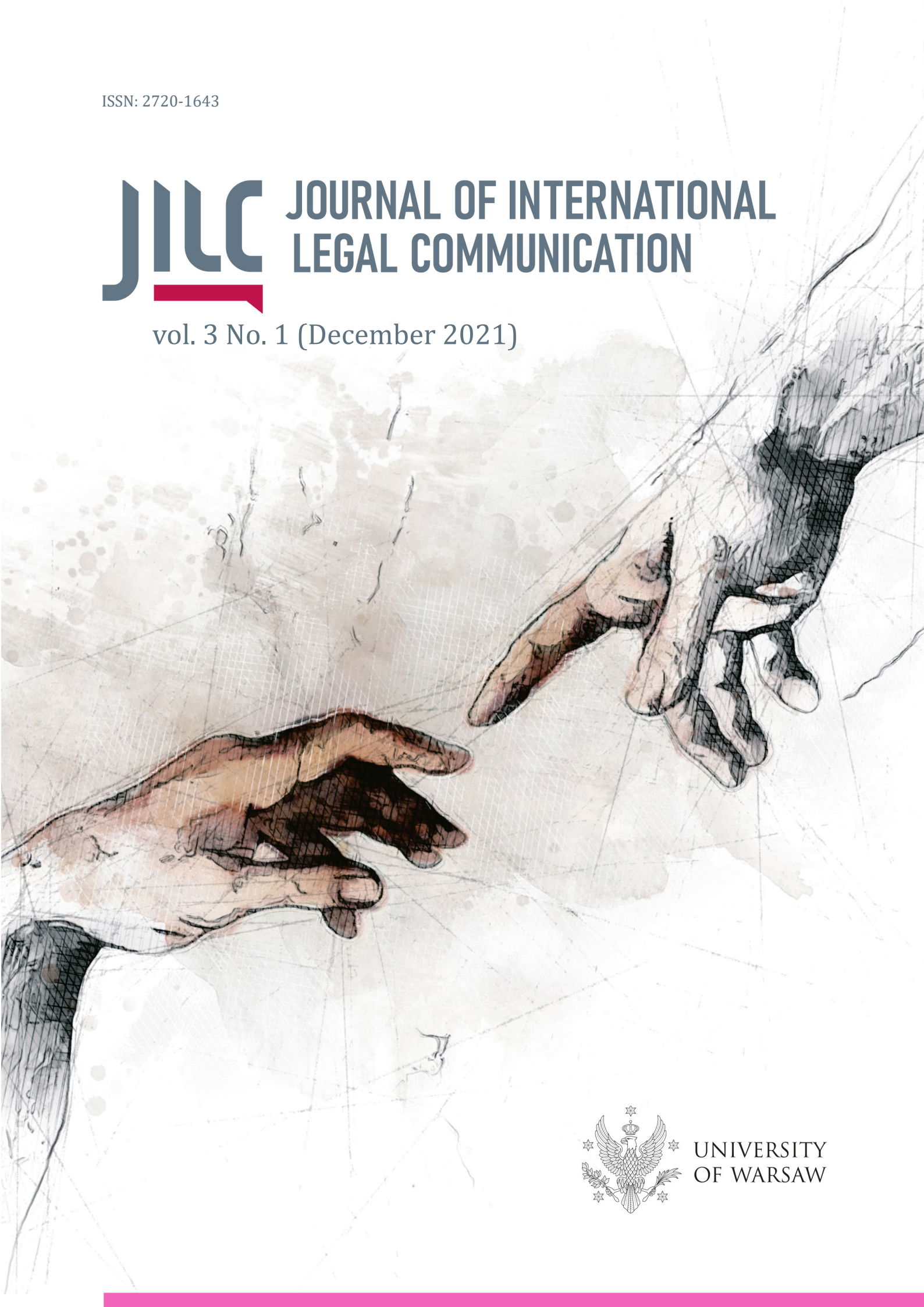

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FOREWORD

The first thematic block in this issue of the Journal of International Legal Communication is structured around human factors. Maria Cristina Paganoni investigates the societal conversation between public health and technology, through the tools of Critical Discourse Studies. She illustrates the role of the linguistic and discursive framing of the values and priorities that inform the public debate about pandemic response management, to which millions of EU citizens have been exposed in the last two years. Anatolii Shevchenko and Olena Zhydovtseva analyze the historical value of women in Ukraine. They prove that the idea of the value of women in Ukraine in the 11th – first half of the 14th century was based on theocentrism with marked anthropological and axiological elements. They explain that the understanding of the value of women in the second half of the 17th–18th centuries changed to be based on anthropocentrism in combination with axiological elements. Then, in the second half of the 17th–18th century, it developed to be influenced by several factors: ideas of the Enlightenment, humanism, and legal customs. Tetyana Tarasevich, Solomiia Tsebenko, Oksana Lapka, Tetyana Pikulya and Liliia Kniazka consider the problem of constitutional and legal regulation of the right to change sex. Based on the analysis of ECHR decisions and positive practice of foreign countries, they show that the correlation of the available definitions gave grounds to assert that the right to change (correction) of sexuality is a somatic right, as it allows for the fundamental reconstruction of a person by changing sex. Daria Yaitska devotes her paper to the key principles of citizens' participation in the management of public affairs. She reveals the connection between the right to participate in public administration and democracy. She analyses the concept of «participatory democracy», which arose because of expanding the possibilities of a democratic state and legal regime and the transition to a human-centric concept of governance.

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The second thematic section deals with welfare and privileges. Svitlana Vyshnovetska, Vadym Vyshnovetskyi and Khrystyna Kmetyk refer to «employee's labour merits» that is welfare of material or moral nature, benefits, and privileges. They consider whether any conscientious performance of the task, within or exceeding, is legal ground to apply the encouragement means or there should be achievements at work. They propose to increase the role of encouragements in regulation of labour relations. Anastasiia Vynohradova devotes her paper to the formulation of general definition of government bodies and officials whose activities are aimed at staffing the courts. She attempts to give proposals to improve the current administrative legislation. Diana Timush presents the definition of the essence of institutional administrative and legal guarantees for a judge immunity and attempts to develop, on this basis, the definition of promising areas in current administrative and legal legislation. She points out the complex nature of institutional administrative and legal guarantees of judge's immunity.

The third section is devoted to the law enforcement. Yevhenii Zubko studies the the problem of forming a modern theoretical and legal model of administrative and legal principles of law enforcement in Ukraine. He points to the challenges, which are its current complexity and problems of interaction between the subjects to the system. Oleksii Petrovych Kulikov highlights best practices in the prevention of recidivism and international standards in this area. He emphasizes that the probation programs currently available in Ukraine are training courses that contribute to the acquisition of specific skills but are not sufficient for comprehensive changes in the life of a person at high risk of recidivism. Therefore, he calls for a need to implement scientifically and normatively approved national programs in accordance with foreign experience and international standards.

Volume 3 closes the JILC Young Writer's Corner with one article. Oluwole Sanni attempts to examine how performed court discourse challenges the language differentials between the male and female legal practitioners. Using selected courtroom scenes of Mike Ross trial in the American TV show, the author notes that female legal practitioners use 'powerless' linguistic patterns in the court interaction not as a demonstration of inferior or subordinate status to their male counterparts but dexterously deployed to achieve intended outcomes.

On behalf of the JILC Editorial Board, I wish you a pleasant reading.

Joanna Osiejewicz
Editor-in-Chief

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CONTENTS

CROSS-BORDER HEALTH DATA FROM LEGISLATION TO IMPLEMENTATION A CRITICAL DISCURSIVE APPROACH TO COVID-19 RESPONSES[1]

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Abstract. With a focus on health datafication in the European Union, this article sets out to investigate a few highlights from the EU's pronouncements on issues of public health and technology, through the tools of Critical Discourse Studies. As an unprecedented public health crisis, the COVID-19 pandemic has revealed that, when it comes to healthcare, EU countries are disconnected from one another. In fact, health datafication is misaligned between Member States and even within national health systems themselves. However, the tech solutionist position that strives for full interoperability of systems in public health (as for contact tracing apps) often disregards the ethical, legal and social issues related to the use of technology itself, i. e. data protection, impact and trust. The aim of the analysis is to illustrate the role of the linguistic and discursive framing of the values and priorities that inform the debate about pandemic response management, to which millions of EU citizens have been exposed in the last two years.

Keywords: contact tracing, Critical Discourse Studies, ethics, health datafication, interoperability, linguistic framing

INTRODUCTION

This paper intends to address the issue of health datafication and data sharing across European borders, scrutinising its several dimensions by means of a critical approach that addresses socio-technical innovations and their uptake in the European Union. The modernisation and digitalisation of health systems and infrastructure are one of the four strategic goals of EU policies and actions in public health. Together with protection against serious cross-border threats to health, access to healthcare and the sharing of health data are overt priorities in the EU agenda.

The notion of interoperability should be introduced at this point as the ability of disparate computer systems or software to exchange data in an efficient and meaningful way. Interoperability in healthcare refers to timely and secure access, and integration and use of electronic health data so that it can be used to optimise health outcomes for individuals and populations. Despite indisputable benefits, however, «interoperability has been identified as one of the greatest challenges in healthcare IT» (ReEIF, 2015). It should be pointed out that interoperability is not just semantic and technical but also legal, which explains why these issues are also debated within the realm of legal communication.

1 This article originates from the 4EU+ University Alliance research project "Transnational Legal Communication on COVID-19: From Legislative to Popular Discourse", under Flagship 2 "Europe in a Changing World: Understanding Societies, Economies, Cultures and Languages", coordinated by prof. Joanna Osiejewicz of the University of Warsaw.

In 2012, with this objective in mind, the European Commission (EC) financed an eHealth Interoperability Framework that was then refined in 2018, highlighting the need to improve the standardisation of eHealth solutions in support to health system reforms.

The eHealth Digital Service Infrastructure (eHDSI) is an infrastructure ensuring the continuity of care for European citizens while they are travelling abroad in the EU. This gives EU countries the possibility to exchange health data in a *secure, efficient and interoperable* way (European Commission website, *emphasis added*).

Interoperable medical data include Electronic Health Records (EHRs) such as (a) Patient Summary; (b) ePrescription/eDispensation; (c) Laboratory results; (d) Medical imaging and reports; (e) Hospital discharge reports (EC, 2019). In 2021 a new legislative proposal to create a European health data space was advanced to facilitate the exchange of health data across Europe, while ensuring privacy over data. At present, the sharing of health data across borders is made feasible by EHR optimisation, the implementation of digital tools and the uptake of apps.

The focus on health data sharing, which is a fundamental part of the digital transformation in healthcare, is seen against the background of the COVID-19 pandemic and the responses implemented by Member States, nationally and internationally. Pandemic surveillance has highlighted the importance of full compliance with data protection levels within the framework of the GDPR (Paganoni, 2020) and the objectives of the 2019 Commission Recommendation (Bincoletto, 2020). That is to say that technologies developed to control the spread of the pandemic should never infringe upon user privacy. While EU digital COVID certificates have made travelling possible again, contact tracing apps have not met expectations so far.

MATERIALS AND METHODS

Besides the General Data Protection Regulation (GDPR), which mandates the rules for processing personal data for all Member States, the data set under analysis is composed of seven official documents at EU level, dealing with healthcare provision and characterised by a noticeable degree of interdiscursivity between different domains (legal, institutional, medical, technical). Moreover, the span of a decade (2011–2021) encompassed in this overview helps to set in context the development of the digital transition in healthcare.

The data set includes:

- Directive 2011/24/EU on the application of patients' rights in cross-border healthcare. It ensures the continuity of care for European citizens across borders, giving Member States the possibility to exchange health data in a secure, efficient and interoperable way. It aims to guarantee patient mobility and the free provision of healthcare services (9 March 2011);
- Commission Recommendation (EU) 2019/243 on a European Electronic Health Record exchange format (6 February 2019);
- Commission Recommendation (EU) 2020/518 on a common Union toolbox for the use of technology and data to combat and exit from the COVID-19 crisis, in particular concerning mobile applications and the use of anonymised mobility data (8 April 2020);
- Communication from the Commission C/2020/2523: Guidance on Apps supporting the fight against COVID-19 pandemic in relation to data protection (17 April 2020);

- Council Conclusions on COVID-19 Lessons Learned in Health 2020/C450/01 (28 December 2020);
- *Assessment of the EU Member States' Rules on Health Data in the Light of GDPR* (11.2.2021);
- eHealth Network Guidelines on Interoperability of Health Certificates (12 March 2021).

The textual materials are scrutinised through the lens of Critical Discourse Studies (Tannen, Hamilton & Schriffin, 2015; Xenitidou & Gunnarsdóttir, 2019), identifying main concepts and keywords and paying specific attention to the linguistic and discursive framing of health datafication before and after the pandemic, with the Regulation (EU) 2016/679 (hereinafter: GDPR) on data protection always in the background. The analysis reflects on how health data flows across borders and their interoperability are discursively framed between opportunities yet to be fully exploited and obstacles that are both technical and legal.

RESULTS AND DISCUSSION

Directive 2011/24/EU considers «the health systems in the Union» to be «a central component of the Union's high levels of social protection» and «part of the wider framework of services of general interest» (Recital 3). Data are framed between two rights, freedom of movement and privacy. «Personal data should be able to flow from one Member State to another, but at the same time the fundamental rights of the individuals should be safeguarded» (Recital 25). Next, the Directive introduces the concept of innovation in medicine and takes «new health technologies to ensure safe, high-quality and efficient healthcare» (Recital 58). Lastly, Article 14 of the Directive sets up the eHealth Network, «a voluntary network connecting national authorities responsible for eHealth designated by the Member States». The goal is that of «delivering sustainable economic and social benefits of European eHealth systems and services and interoperable applications, with a view to achieving a high level of trust and security, enhancing continuity of care and ensuring access to safe and high-quality healthcare» (Article 14.2.a).

When cross-border scenarios are foreseen, the interoperability of applications and of EHR systems is weighed against public health concerns. A few years after Directive 2011/24/EU, when benefits as well as challenges of big data in healthcare have become more evident, these issues are addressed in the GDPR from a legal, organisational and technical perspective, when discussing data portability. In sum, the interoperability context does not exempt data controllers from implementing organisational and technical measures for ensuring data protection (Bincoletto, 2021).

Nevertheless, the GDPR mentions «health security, monitoring and alert purposes, the prevention or control of communicable diseases and other serious threats to health» as grounds to derogate from data protection. «Such a derogation may be made for health purposes, including public health and the management of health-care services, the prevention or control of communicable diseases and other serious threats to health» (Recital 52). Without a doubt, measures to fight the COVID-19 pandemic can be included here.

Developing from the GDPR and the focus placed on the rights of *data subjects*, Recommendation 2019/243 addresses *citizens* first, *healthcare providers* and then *patients*, foreseeing an increase in healthcare needs and spending «as a result of population ageing,

rising prevalence of chronic conditions and a rise in demand for long-term care» (Recital 4). It argues that «the highest possible standards for security and data protection are central to developing and exchanging electronic health records» (Recital 12), emphasising the right to securely access personal data (we count four occurrences of *secure access* and six of *securely*) and protect them from *data breaches*. However, it constructs patients as a homogenous group, conversant with digital technologies, which is not often the case with elderly people, the disabled or simply European citizens that happen to be «(dis)connected in a hyperconnected world» (Xenitidou & Gunnarsdóttir, 2019, p. 302) and may be unfit to engage actively in their healthcare and wellness management.

Quite understandably, Recommendation 2019/243 sets out a framework for the development of a European electronic health record exchange format, «minimising the risk of possible tampering and misuse» (Recital 13) and building strong *cybersecurity*. Digital technologies such as health apps and wearable devices are promoted, while more interoperable electronic health systems may «give citizens greater control over their health data» (Recital 6), at the same time reducing «the costs associated with healthcare for individuals and households» (Recital 5). While «new technologies for health should support citizens to become active agents of their own health journey» (Recital 9), «the lack of interoperability with regard to electronic health records leads to fragmentation and a lower quality of cross-border healthcare provision» (Recital 11). Agency in a patient's lifestyle is thus emphasised, while incompatibility and fragmentation of electronic health records are denounced. Lastly, «new technologies, such as big data analytics and artificial intelligence can support the search for new scientific discoveries» (Recital 18).

From the start, Recommendation 2020/518 frames the COVID-19 pandemic as «a public health crisis» and «an unprecedented challenge to [*the EU's*] health care systems, way of life, economic stability and values» (Recital 1). It outlines a European approach to the pandemic and proposes «a number of steps and measures for developing a common approach to the use of mobile applications and mobile data», stressing that «any use of apps and data should respect data security and EU fundamental rights, such as privacy and data protection» (Kędzior, 2020, p. 535).

1. Digital technologies and data have a valuable role to play in combating the COVID-19 crisis, given that many people in Europe are connected to the internet via mobile devices. Those technologies and data can offer an important tool for informing the public and helping relevant public authorities in their efforts to contain the spread of the virus or allowing healthcare organisations to exchange health data. However, a fragmented and uncoordinated approach risks hampering the effectiveness of measures aimed at combating the COVID-19 crisis, whilst also causing serious harm to the single market and to fundamental rights and freedoms (Recital 2).

2. National health authorities supervising infection transmission chains should be able to exchange interoperable information about users that have tested positive with other Member States or regions in order to address cross-border transmission chains (Recital 19).

3. Certain Member States have taken measures to simplify access to necessary data. However, the EU's common efforts combating the virus are hampered by the current fragmentation of approaches (Article 22).

At any rate, measures should be «the least intrusive yet effective» (Article 16.2). Contact tracing apps should be *voluntary*, transparent, temporary, cybersecure, use temporary and pseudonymised data, rely on Bluetooth technology, be approved by national health authorities and be interoperable across borders as well as across operating systems (Bincoletto, 2021).

Recommendation 2020/518 was accompanied by the European Commission's Guidance on Apps supporting the fight against COVID-19 pandemic in relation to data protection.

4. [*Apps*] can have a significant impact on disease diagnosis, treatment and management of COVID-19 inside and outside the hospital setting. They are particularly relevant when containment measures are lifted and when the risk of infection grows as more and more people are in contact with each other. These applications can help to interrupt infection chains faster and more efficiently than general containment measures, and can reduce the risk of the virus spreading significantly (EC, 2020, p. 1).

5. The elements presented below aim to provide guidance on how to limit the intrusiveness of the app functionalities in order to ensure compliance with the EU personal data protection and privacy legislation (EC, 2020, p. 2).

In fact, the effectiveness of contact tracing apps, which have repeatedly been accused of intrusiveness, has been questioned throughout. They were developed to trace cross-border infection chains and thus lift containment measures, but a preliminary evaluation shows that their usefulness has been limited, with findings on their effectiveness diverging significantly from country to country (Cebrian, 2021; Chiusi, 2021; Poillot *et al*., 2021).

At this point, the 2021 *Assessment of the EU Member States' Rules on Health Data in the Light of GDPR* can be seen as a comprehensive compendium of the legal framework and governance of health data, especially as «the onset of the pandemic has made it even more necessary to rethink the availability and accessibility of data and […] health data are needed in the fight against the virus and the protection against serious cross-border health threats in general» (EC, 2021, p. 53). It outlines the features of the future European Health Data Space (EHDS).

6. the EHDS will provide access to datasets necessary to make successful use of emerging *responsible, human centred artificial intelligence and machine learning techniques* to drive innovation in healthcare (EC, 2021, p. 11, *emphasis added*).

As can be seen in the above quotation, the ethical concept of responsibility guides the digital governance of healthcare data by positioning artificial intelligence and big data as drivers for innovation within human control.

The *Assessment* dedicates an entire paragraph (4.5) to *public health threats* (12 occurrences) and their new trends (possibly new variants of the Coronavirus). Quite significantly, it points out to a fragmentation of approaches that are not just technical but legal, as inter-jurisdictional research highlights.

7. While the GDPR harmonises cross-European data protection law to facilitate the free flow of data across Member States, it is evident from the mapping of Member States' legislation and feedback from national experts, that there are divergences in the application of the GDPR in the context of health research (EC, 2021, p. 73).

8. While the GDPR is a much appreciated piece of legislation, variation in application of the law and national level legislation linked to its implementation have led to a fragmentation

of the law which makes cross-border cooperation for care provision, healthcare system administration or research difficult (EC, 2021, p. 144).

Shared ethical standards are especially important at the level of health requirements for health- related research, as the data involved in that kind of practice are not only personal but sensitive. These concerns are diversely framed in the *Assessment* as the *ethical evaluation, acceptability and supervision of biomedical research, ethical vetting, clear ethical and legal guidelines on how to use genomic data, the ethical challenges of using private clouds for genetic research*.

The 2021 *Assessment* ends on a mention of trust and links it to patients' agency and rights in healthcare and cross-border healthcare, after noting at the beginning that «patients do not always find it easy to exercise the rights granted by the GDPR» (EC, 2021, p. 10).

9. [S]ound health data governance will be one of the pillars of trust that support the European Health Data Space, but it can only be successful if it is truly supportive of the other pillars of trust which demand assurance of data quality, transparency, and the full support to patients to act as active agents in their own health and care, with full capacity to exercise their health data related rights (EC, 2021, p. 145, *emphasis added*).

This is a central point in the EU's approach to digital governance and AI. Citizens should actively decide by free consent who can use their data and for what purposes, combined with *trustworthy* technologies, processes and actors.

In a similar manner, the eHealth Trust Framework «defines the rules, policies, protocols, formats and standards needed to ensure that Covid-19 health certificates are issued in such a way that their authenticity and integrity can be verified and trusted» (eHealth Network, 2021, p. 3). It amounts to saying that the certificate has been issued by an authorised entity, can be linked to the holder of the certificate and the information it presents is authentic, valid, and has not been altered. Once implemented at a national level, these certificates should be interoperable. Besides, the trust architecture that presides over the processing of personal data is also subject to legal considerations under the scope of the GDPR.

10. The trust framework should *by design and default* ensure the security and the privacy of data in the compliant implementations of digital vaccination certificate systems, ensuring both security and privacy (eHealth Network, 2021, p. 5).

In sum, benefits and challenges of health datafication as a central strategy in EU public health policy have increasingly gained visibility in institutional and legal communication, with the pandemic acting as a spur towards effective harmonisation and interoperability.

CONCLUSIONS

Following a number of legal regulations and policy decisions over the years, the Digital Agenda for Europe has established secure and shareable health data as a priority. Technical and legal interoperability between health data repositories is therefore of enormous importance to the overall public good and in public health. As such, in the EU official documents here illustrated, we observe that interoperability is discursively encoded through a number of words and phrases that emphasise common intent and sharing of workflows.

However, these commitments did not fully hold up in practice in the COVID-19 health crisis. «It is a fundamental finding that the outbreak of the COVID-19 pandemic has revealed and exacerbated vulnerabilities in a wide variety of issues and areas» (Council of the European Union, 2020, p. 1). The health emergency has shown a number of possible obstacles to a more harmonised approach towards fighting the pandemic in the EU Member States. Once more, the pandemic has revealed how decentralised and disconnected Member States are from one another when it comes to healthcare, throwing into relief the importance of handling data efficiently to protect citizens (OECD, 2019).

Health datafication is still managed unevenly between them or within national health systems themselves. As fragmentation results in lower healthcare quality, and higher risk in controlling a pandemic, interoperability and standardisation should replace siloed technology.

Institutional communication about datafication in EU public health policy over the time span of a decade, but especially during and just after the pandemic, illustrates that regulations and guidelines hardly provide a straightforward answer. Instead, handling health data raises epistemological and ethical issues. Epistemologically, the digital governance of data is prone to wrong assumptions.

The tendency to rely on mere Big Data furthermore ignores the variable quality of datasets. For instance, electronic health records typically consist of data written by clinicians for clinical work without the interests of researchers, standardisation and interoperability in mind, while aggregation of observational data for purposes of identifying causal links is prone to selection, confounding and measurement biases (Mittelstadt & Floridi, 2016, p. 18).

Nor can a tech solutionist position work satisfactorily at the ethical level. European societies are highly diversified, with an ageing population and uneven digital literacy. Too often in institutional discourse citizens are framed «as rights holders …[*under*] the assumption that people are aware of their rights and can act upon that awareness» (Xenitidou & Gunnarsdóttir, 2019, p. 296). Conflicts of interest exist between connectedness and proprietary systems, risk factors should be evaluated to find a balance in the trade-off of civil liberties for safety (Akinsanmi & Salami, 2021), especially in the implementation of AI techniques and in machine learning. Innovative technologies are much needed for cost-effective and sustainable solutions in healthcare management and may be of great help during public health crisis, but they should also be trustworthy and allow for active consent. It follows that reliance on legal regulation should be enriched with insights from information ethics (Raab, 2017; Taylor, Floridi & van der Sloot, 2017). For Mittlestadt and Floridi (2016), the ethical mindset best suited for the governance of the digital in the EU is a «*post-compliance ethics*» (p. 4) or a «soft ethics approach» (p. 5), as in the EU «digital regulation is already on the good side of the moral vs. immoral divide» while «legislation is necessary but insufficient» (p. 5).

All these observations should be kept in mind while assessing the limited effectiveness of contact tracing applications in the COVID-19 pandemic, instead of discarding them as an example of unsuccessful health datafication in the EU. Finally, digitising health records and enabling their exchange could also support the creation of large health data structures which can support the search for scientific discoveries, when combined with the use of new technologies, such as big data analytics and artificial intelligence

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LEGAL VALUE OF WOMEN IN UKRAINE DURING THE MIDDLE AGES

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Abstract. This article examines the content of the legal value of women in Ukraine during the Middle Ages. It is proved that the idea of the value of women in Ukraine in the XI – first half of the XIV century was based on theocentrism with marked anthropological and axiological elements. It was found that the content of different types of legal status of women is characterized by equality of personally free groups to which women belonged, giving her broad personal and property rights, value of her life, honour, dignity, freedom, high social and legal status of women. It is substantiated that the understanding of the value of women in Ukraine in the second half of the XIV – first half of the XVII century compared to the notions of her value in the previous days evolved towards the dominance of anthropocentrism with axiological elements. It is established that the transition from the first ideas about the legal value of women in the XI – first half of the XIV century to its understanding in the second half of the XIV – first half of the XV century was influenced by both Renaissance ideas and ideology of privileged segments of the population. Understanding of the legal value of women in this period was clearly reflected in the legal status of various groups. It is proved that the understanding of the value of women in the second half of the XVII–XVIII centuries was based on anthropocentrism in combination with axiological elements. At the same time, in the second half of the XVII–XVIII centuries, the structural components of anthropocentrism changed and the notion of the "reasonableness" of the individual came to the fore. It is substantiated that the transition from understanding the legal value of women in the second half of the XIV – first half of the XVII century to understanding the concept of "legal value of women" in the second half of the XVII–XVIII century was influenced by a number of factors: ideas of the Enlightenment, humanism, some of which were reflected in historical and legal notes, legal customs of the Ukrainian people, which enshrined the love of freedom, equality, social justice, the ideology of the privileged sections of the population, which became the dominant state of society in the late XVII–XVIII centuries.

Keywords: Middle Ages, woman, legal value, legal status, rights and responsibilities

INTRODUCTION

In the conditions of reforming the modern domestic legal system, intensification of the processes of European integration of Ukraine, the study of the axiological characteristics of

women acquires special importance. The centuries-old history of human communities proves that the understanding of woman as a legal value was variable and reflected the objective realities of a particular period or era. In the modern world, woman, being a biosocial and legal being, a unique basis of historically changing state and legal, civilizational and other entities and structures, an expression of individual, collective and group, social needs and interests, needs to rethink and interpret herself as a value phenomenon.

The current state of development of Ukraine necessitates a rethinking of existing approaches to clarify the essence of law and its importance in the life of each individual and society as a whole. As an important socio-cultural phenomenon, law is inextricably linked with woman as a person, acting as an important factor in protecting her interests, rights and freedoms (Shevchenko et al, 2020a).

We believe that the basic position on the knowledge of human legal value within the existing theories of legal understanding is the theory of natural law, which has a thousand-year history and originates from the depths of ancient philosophical and legal thought, within which the search for higher values took place (Shevchenko et al, 2020b).

These processes should be facilitated by current trends in the polylogue of different understandings of law, the search for the most optimal ways to humanize the essence of law, the activation of "human-dimensional" legal research. Knowledge of the legal value of woman is not only theoretical but also practical, as it is aimed at extrapolating theoretical generalizations and abstractions to the legal sphere, the development of proposals to improve existing domestic legislation. The topic of this publication is actualized by the fact that in modern domestic theoretical and historical-legal science there are no complex and systematic developments of the problem of the content of the legal value of woman in Ukraine in the Middle Ages. Thus, there is a significant gap in the scientific knowledge of this problem, which this study is aimed at. The purpose of the article is to clarify the content of the legal value of woman in Ukraine during the Middle Ages.

The following methods were used in the research process: dialectical method, as well as a number of general scientific (analysis, synthesis, logical, systemic, structural, functional, hermeneutic, axiological) and special methods (comparative-historical, formal-dogmatic, etc.).

RESULTS AND DISCUSSION

The first ideas about the value of woman in Ukraine in the XI – first half of the XIV century to some extent influenced the formation of ideas about her legal value. It is contained in such works as "Teachings" by Vladimir Monomakh, "Word" (or "Prayer") by Daniil Zatochnik, "Word of Law and Grace" by Metropolitan Hilarion, "Letter to Thomas" by Kliment Smolyatych, "The Parable of the Human Soul and Body" Kirill Turovsky, "Izbornik" of 1073, "Izbornik" of 1076 and others.

The idea of the value of woman in Ukraine in the XI – first half of the XIV century included the following characteristics:

– dominated by the postulate of "inner man" (i.e., a man endowed with high moral and spiritual qualities: charity, philanthropy, mercy);

– the most important human value is spirituality;

– the "image of God" is manifested in man (this means that man has a mind, freedom of choice and will);

– a person is valued for his creativity, diligence, independence, perseverance, diligence, self-sufficiency, responsibility, honour and dignity, courage, patriotism;

– man and his life act as special values, self-values, which testifies to the humanistic nature of ancient Ukrainian philosophical and legal thought;

– human development is understood as constant self-improvement (spiritual improvement);

– the human personality is seen as unique, free and equal.

These characteristics give grounds to claim that in the XI – first half of the XIV century a woman, her life was imagined from anthropologically oriented (human) and axiological views. It should be borne in mind that ideas about the value of woman in the XI – first half of the XIV century were formed during the reign of religious worldview; however, theocentrism included the above views; therefore, we can say that the general idea of human value in the XI – first half of the XIV century was based on theocentrism with marked anthropological and axiological elements. This perception of a woman's value also influenced society's perception of a woman's legal value.

In our opinion, it was reflected in the norms of written sources of law, customary law of Kievan Rus, which enshrined one or another type of legal status of a person, which, in turn, affected the ability of woman to discover or realize themselves, make certain choices and more. And attention should be paid not only to the general legal status, but also, given the diversity of society – to the rights and responsibilities of different social groups.

According to the ancient legal custom, confirmed by the norms of Ruska Pravda, only sons had the right to inherit their father's property (according to the principle of the minorate, when the father's yard passed to the younger son and the rest of the property was divided between the older sons) (Article 100 of Prostorova Pravda) (Zimin, 1952).

However, this did not mean that the daughters could not claim the father's property at all: the brothers had to give her a dowry if the sister married; if the boyar or warrior had no sons, and the inheritance went to the daughters; although after the death of the peasant, who had no sons, his property passed to the prince, but the daughters were given a share for future dowry (Articles 90, 91, 95 of the Prostorova Pravda). According to some researchers, the rule that the daughters of a boyar or warrior inherited property in the absence of sons eventually spread to white clergy, artisans, free community members (Nelin, 2013; Nelin, 2014; Dolynska, 2014).

Thus, the woman was not deprived of participation in the distribution of parental property, society and the state tried to ensure her relative independence from the care of her husband (as far as possible in the Middle Ages), and this indicates a fairly high social and legal status in the XI – first half of XIV century, reflects the essence of ideas about her legal value.

The above level of social and legal status of woman is especially noticeable in the analysis of the norms of Ruska Pravda, which enshrined her rights after marriage.

Thus, the wife had the right to her own property, and after her husband's death she inherited part of the property for "living", the rest of the property (which was the children's

inheritance) she could dispose of, but only in the interests of children and until they reach adulthood. That is, the mother, in fact, became the head of the family, was the guardian of the children. She was free to dispose of the property in her personal possession ("mother's property") and, interestingly, to bequeath it to both her sons and daughters. If she did not leave a will, her property passed to the children with whom she lived (Articles 93, 94, 102, 103, 106 of the Prostorova Pravda) (Zimin, 1952).

As some researchers rightly point out, these norms reflected the great importance of a woman's work in the family, her property status in the family, testified to the equality of legal status of husband and wife, and the relationship between husband and wife was based on equality, spirituality, humanism and justice (Martyniuk, 2010; Poliarush, 2010; Kravets, 2011; Nestertsova-Sobakar, 2011; Pokhodzilo, 2016).

Enhanced protection was established for encroaching on the honour and dignity of woman. Thus, the church statute of Yaroslav establishes high fines for causing a girl or a married woman "shame" (rape, kidnapping, insult, etc.) (Articles 1, 2, 3, 6) (Zimin, 1952). These norms once again confirm the idea of the high social and legal status of women in the XI – first half of the XIV century, the efforts of society and the state to ensure its rights, equality with a man (Kudin, 2001).

The anthropocentric and humanistic nature of law was a reflection of the influence of legal customs, the appropriate level of legal consciousness of the population and understanding of a free person as a resident of his state, who had a wide range of rights, freedoms, their ability to use along with other residents. This was considered fair, as the ability to provide every free person with opportunities for self-realization was originally "sanctified" by ancient customs and confirmed by legislation of the XI–XII centuries.

The spiritual self-improvement and practical realization of a free woman's potential in various spheres of public life were the objective conditions of social, economic, cultural, state, legal, etc. development of the country. In other words, the needs of such development required a self-sufficient and developed man, which was an important element in the process of forming ideas about the legal value of woman.

In the second half of the XIV – middle of the XVII centuries, legal thought developed under the influence of the ideas of Renaissance humanism (or the Renaissance).

This epoch should be understood as a set of doctrines, the authors of which substantiated the earthly spontaneous self-affirmation of the human person and his desire to embrace and comprehend the world in its entirety.

The Renaissance period is associated primarily with the spread in culture, art, philosophy, the ideas of humanism, which affirmed the human right to earthly happiness, personal expression, free from religious restrictions, the development of science, and within which the concept of man as of the highest value, the creator of his own destiny, capable to explore the infinite knowledge of the world around him was formed.

It should be noted that the spread of the ideas of Renaissance humanism in Ukraine in the XV – first half of the XVII century contributed to a number of preconditions.

Among them are a set of factors of the socio-economic, political, religious and cultural life of that time, which influenced the formation of the early bourgeois spiritual culture; an important place among these factors was the emergence of a significant number of

economically independent cities with Magdeburg law, which became centres not only of handicrafts and trade, but also of socio-political and cultural life.

The ideological basis for the spread of anthropocentric views in Ukraine in the Renaissance-humanist version in this period were Western European and Byzantine traditions; the legal literature of the XI – first half of the XIV century had a significant influence.

In particular, from this period legal thought paid attention to the problem of man, his self-knowledge, the study of its essence and meaning of life, the problem of freedom of choice, individual and personal in man.

According to V. Lytvynov, the development of Renaissance humanism in Ukraine in the XV – first half of the XVII century went through two stages. In the first (approximately until the middle of the XVI century) humanists were more interested in socio-political, confessional and ethical issues.

During the second period (from the second half of the XVI century – to the beginning of the XVII century), there was an intensive development of early humanistic ideas intertwined with the Reformation, as well as with the ideas of the Byzantine Renaissance. At this stage, well-known cultural, educational, scientific, literary and educational associations appeared; a characteristic feature of that time was the active formation of the historical self-consciousness of the Ukrainian people, the development of the ideal of humanistic patriotism (Lytvynov, 2003).

Here are the essential characteristics of understanding the legal value of man in Ukraine in the second half of the XIV – first half of the XVII century, reflected in the works of such thinkers as Gregory Sanotsky, Yuri Drohobych, Paul Krosnensky, Lukash from New Town, Stanislav Orikhovsky-Roksolan, Joseph Vereshchinsky, Sevastyan Klenovich, Shimon Shimonovich, Simon Pekalid, Ivan Dombrovsky, Lavrentiy Zyzaniy Tustanovsky, Stefan Zyzaniy, Demyan Nalyvayko, Meletiy Smotrytsky, Kyrylo Trankvilion-Stavrovetsky, Khoma Yevlevych, Yov Boretsky, Kasiyan Sakovych, Ivan Vyshensky and others.

Such characteristics include the following:

– man is a creator of values and must actively assert himself in earthly life;

– recognizes the self-worth and self-sufficiency of a person who has freedom of self-determination;

– she is a free and god-like being, a "responsible employee of the Creator";

– man is a microcosm (small world), which repeats the macrocosm (big world);

– "the meaning of life" is determined not so much by the salvation of the soul, as the prospect of its own actions, it is able to create itself and change the world, realize their own creative abilities, strive for "earthly" happiness;

– man's vocation is self-knowledge and knowledge of his place in the world;

– among the most important human virtues were individualism, personal valor, creativity, diligence, virtue, activity in public life, heroism, dignity, nobility, courage, wisdom, intelligence, patriotism, education, prudence, nobility, energy, foresight, brotherhood, philanthropy;

– the importance of man was determined not by aristocratic origin, but by personal qualities.

Legal norms that were in force on the territory of Ukrainian lands in the second half of the XIV – first half of the XVII century, clearly regulated the family law status of husband, wife and

children. It should be noted that during this period the marriage acquires the characteristics of a legal contract. This is evidenced, in particular, by the existence of a kind of "marriage contract" ("intercession"), under which a woman brought a dowry into the house, and a man – vino, and the legislator primarily protected woman's property rights: the amount of vino should be twice the dowry, however, not to be more than a third of real estate; after the death of her husband, it became the property of his wife. It was also forbidden to forcibly marry girls of noble status without their consent, it was necessary to take into account their wishes (Second Edition of the Lithuanian Statute, Chapter III, Article 31) (Kivalova et al, 2004).

As researchers rightly point out, the recognition of a woman's property rights, the transfer of her fault, and the equality of married participants in raising children made the wife financially independent of the husband during his lifetime and provided for her in the event of her husband's death; all this indicates a significant independence of women (Maikut, 2009; Kravets, 2011; Boiko, 2013; Boiko, 2014).

In addition, the Lithuanian Statutes of the Second and Third Editions allowed for divorce ("protest"), ensuring the interests of women; she had the right to remarry; a noblewoman could pay taxes, hold public office, enter into contracts freely, inherit a man's estate, and so on.

At the same time, the development of marital and family relations in the second half of the XIV – first half of the XVII centuries was significantly influenced by the existence of caste principles of the right-privilege. A characteristic manifestation of this is that a noblewoman who married a non-nobleman (both free and dependent commoner) lost her nobility and the right to own property.

In addition, the legislation did not clearly regulate the property rights of a peasant woman, she could be involved in the payment of her husband's debts; if such a woman married in another locality, the permission of the lord was required, who, moreover, received a monetary fee; the lord could force serfs to marry; freedom of marriage applied only to persons of nobility, and so on.

The next stage in the development of awareness of the legal value of women in Ukraine was the period of the second half of the XVII–XVIII centuries. The legal teachings of the Enlightenment had a significant impact on the nature of understanding the legal value of woman.

In Ukraine, the Enlightenment (Baroque era) was characterized by the efforts of this era to solve the problem of universal justification of the idea of law, based on European ideas of "natural law" and "social contract", to spread such a direction as "philosophy of heart" (cardiocentrism), to develop a set of humanistic ideas. In general, the Enlightenment promoted the ideas of bourgeois democracy, individual freedom, equality, social progress, and the republican state system (Lytvynov, 2003; Zaremskyi, 2013).

Understanding the value of women in the Enlightenment is presented in the works of professors of the Kyiv-Mohyla Academy (F. Prokopovich, S. Yavorsky, J. Kozelsky, S. Desnitsky, J. Kononovich-Gorbatsky, I. Gizel, L. Baranovich, I. Galyatovsky, D. Tuptal, M. Kozachynsky, H. Konysky, H. Skovoroda and others).

In our opinion, the main aspects of understanding the value of man (as well as woman) include the following:

– emphasis is placed on the "autocracy" of the human mind;

– man is the creator of his destiny, a free and active person;
– human action is evaluated through the category of "true virtue";
– man is an end in itself, so the basis of his social existence should be personal freedom and legal equality, which are a measure of justice, and, at the same time, a natural property of man;
– the essence of man is determined by the "heart", which is the source of thoughts and knowledge;
– natural abilities and vocation of man correspond to "related" work (i.e. one that corresponds to the inclinations and type of human behaviour), which provides self-realization, happiness, harmony, satisfaction and joy for man and should be aimed at the benefit of society;
– a person realizes his abilities through education and self-knowledge;
– the purpose of human life – self-knowledge, moral self-improvement, self-affirmation and fulfilment of duty;
– the idea of "inner" (spiritual) man dominates;
– a person must be aware of the self-worth of his "I", to achieve harmony of feelings and mind, worldview;
– man must have the will to power over himself, his passions, the will to knowledge and creativity, and freedom of will is considered through the prism of natural human rights;
– the value of man is determined by his qualities, such as reason, knowledge, diligence, faith, mercy, justice and is manifested in his deeds).

Thus, we can draw the following conclusion, which follows from the comparison of understanding the value of woman in Ukraine in the second half of the XVII–XVIII centuries and its understanding in the previous days. Yes, this understanding was based on the ideas of Renaissance humanism and became its natural continuation. Based on the main aspects of this understanding in the second half of the XVII–XVIII century, it can be argued that it was also based on anthropocentrism in combination with axiological elements.

However, there is a change in the structural components of anthropocentrism: the concept of "reasonableness" of the individual comes to the fore. A woman is presented as an active subject of social life through awareness of the goals of her creative activity, ability to choose and freedom of will, which was achieved through reason, use of intellectual abilities, rational understanding of their own future actions.

That is why it is necessary to agree with the opinion of S. M. Wozniak that educational anthropology can be defined as anthroporation-centrism (Wozniak, 2011). According to Ukrainian thinkers of this period, the realization of natural and legal ideas (legal equality, freedom, the right to happiness, etc.) was supposed to promote the process of active (and reasonable) human life.

The ideas of humanism, the Enlightenment, and the understanding of woman's values were reflected in a number of historical and legal sources of the second half of the XVII–XVIII centuries. In particular, we pay attention to the text of the Constitution of P. Orlyk (1710).

In our opinion, the following ideas were enshrined in it:

– enshrined the ideas of justice, democracy, extracurricular and equal status, respect for people, support for socially vulnerable groups, election of officers and hetman, limiting his power, republican parliamentarism, responsibility of the government to man, national identity;

– it was focused on the eternal values of the mental orientation of Ukrainians to freedom and personal uniqueness;

– he affirmed the values of natural and legal regulators of public life, protection of natural rights of man and people (property, court proceedings, etc.);

– in it "the individual becomes more valuable… already considered a specific centre of public life" (Constitution of P. Orlyk, 1710).

A significant place in the Constitution is given to the protection of "rights and freedoms" of man regardless of his social status; however, it is also a question of special protection of the rights of socially vulnerable segments of the population.

Thus, Chapter X states that "military and commonwealth people should not suffer unprofitable burdens, taxes, oppression and extortion"; therefore it is necessary "that gentlemen colonels, centurions, atamans with all military and commonwealth officials should not dare to perform serfdom and work on their private farms by Cossacks and commonwealths, especially those who do not belong to their governments or to them directly: not to force haymaking, harvesting and dams, not to take away and force to sell land, not to seize movable and immovable property for any offense, not to force artisans to do their household chores free of charge and not to involve Cossacks in private mailing".

Special emphasis was placed on banning tax collectors and tolls from "extortion" against "poor people"; demand from "ordinary people" to keep passing officials and provide them with transport; to collect taxes from Cossack widows and Cossack orphans, as well as women whose husbands were on campaigns, and to involve them in public works (Chapters XI, XIV, XVI).

The norms of family law in the second half of the XVII–XVIII centuries were aimed at ensuring the rights of persons entering into marriage, as well as the relative equality in the marriage of husband and wife (Shevchenko, 2020). Yes, the marriage was preceded by the agreement of the bride's parents, but if the latter did not gave their consent to the marriage, the agreement expired. Although personal relations between spouses were based on the dominance of the husband's family, and "the wife did not have full legal independence" (Ostapenko, 2009), but in property relations there was equality.

In particular, each of the spouses could have their own property, each of them in equal shares brought a share of property (vino and dowry); after the husband's death, it was his wife, not his relatives, who managed the vino and the dowry; if the husband negligently lost his wife's dowry, the vino passed to her; if the husband did not bring vino into the common house, then after his death the wife received a dowry, as well as all the jointly acquired property; all property passed to the childless widow.

All the above testifies to the understanding of the high role traditionally played by woman in the life of Ukrainian society, respect for her rights, and the articles of Chapter X "Rights of the Little Russian People" established a respectful attitude towards her.

Therefore, we must agree with I. M. Petrenko that the social status of woman in Ukraine has always been high and respected. During centuries of history, there are almost unknown periods when a woman would not be free in her actions. Attempts by Greek monks to introduce the Byzantine view of woman as an unclean creature in Ukraine were unsuccessful. Attempts by the Mongol-Tatars to establish the Asian order, under which

the woman was under the rule of her husband, were also unsuccessful. The Ukrainian woman knew neither the "prison gate", nor the monastic solitude of her husband, nor the contempt, according to "Domostroy", suffered by women in the neighbouring Moscow state (Petrenko, 2008).

CONCLUSIONS

The idea of the value of woman in Ukraine in the XI – first half of the XIV century was based on theocentrism with pronounced anthropological and axiological elements, and in some way influenced the idea of its legal value. This idea was reflected in the norms of law enshrined in the Ruska Pravda, in the civil, family and criminal legal status of woman, as well as in historical literary notes.

The content of different types of legal status of woman is characterized by equality of personally free groups to which woman belonged, giving her broad personal and property rights, value of her life, honour, dignity, freedom, high level of social and legal status of woman. This gave woman the opportunity for spiritual self-improvement and practical realization of her potential in various spheres of life.

The understanding of the value of woman in Ukraine in the second half of the XIV – first half of the XVII century compared to ideas about her value in the previous days has evolved towards the dominance of anthropocentrism with axiological elements.

The transition from the first ideas about the legal value of woman in the XI – first half of the XIV century to its understanding in the second half of the XIV – first half of the XV century was influenced by Renaissance ideas, partly reflected in the regulations of the XV–XVI centuries and more to a large extent, the ideology of the privileged sections of the population (magnates and gentry), which became the dominant state of society in the second half of the XV – mid XVII century. Understanding of the legal value of woman in this period was clearly reflected in the legal status of various groups.

Understanding the value of women in the second half of the XVII–XVIII centuries, as in the previous period, was based on anthropocentrism combined with axiological elements (influenced by the views of Ukrainian philosophers of the XV – first half of the XVII century, educational and humanistic ideas). At the same time, in the second half of the XVII and XVIII centuries, the structural components of anthropocentrism changed and the notion of the "reasonableness" of the individual came to the fore.

The transition from understanding the legal value of woman in the second half of the XIV – first half of the XVII century to understanding the concept of "legal value of woman" in the second half of the XVII–XVIII century was influenced by a number of factors: Enlightenment, humanism notes, legal customs of the Ukrainian people, which enshrined freedom, equality, social justice, the ideology of the privileged sections of the population (Cossack officers and gentry), which became the dominant state of society in the late XVII–XVIII century.

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CONSTITUTIONAL AND LEGAL REGULATION OF THE RIGHT TO CHANGE SEX IN THE CONTEXT OF THE IMPLEMENTATION OF SOMATIC HUMAN RIGHTS

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Abstract. The article considers the problem of constitutional and legal regulation of the right to change sex in the context of the implementation of somatic human rights. Based on the analysis of ECHR decisions and positive practice of foreign countries, it is noted that gender denial (mismatch between anatomical gender of an individual and his gender identity (mental gender)), i.e. transsexualism, is a type of mental and behavioral disorders of an individual. According to the most Western experts, the only effective method of treating transsexuality that gives more or less satisfactory results is surgical and hormonal correction of sex in accordance with gender self-identification, taking into the account the change of documents and socialization in a new gender role. It is emphasized that the most controversial issue so far is the issue of succession in case of gender reassignment, i.e related to the transfer of rights and responsibilities from a person before gender reassignment to a person after such a change. Emphasis is placed on the need to consolidate the universal succession in the event of a person's change of sex, which implies the transfer of all property, a set of rights and obligations belonging to the person to the successor, and it is not only about existing rights and obligations, but also future not identified at the time of succession. It is noted that the succession should take into account the ability to accept such rights and responsibilities, the ability of a person (who has changed sex) to bear them (e.g, military service, the right to an old-age pension, etc.), as these provisions form vacuum in legislation. The new legal status of a person who has changed sex is established in full at the time of the final change of identity documents, and this should be the basis for succession in the

event of a change of sex. The correlation of the available definitions gave grounds to assert that the right to change (correction) of sexuality is a somatic right, as it allows for the fundamental reconstruction of a person by changing sex. It is concluded that since Art. 51 of the Constitution of Ukraine clearly states that marriage is based on the free consent of women and men, so it is too early to talk about the mechanism of same-sex marriage in Ukraine, as this institution is not enshrined in law. National law also prohibits adoptive parents who are same-sex or unmarried foreigners.

Keywords: somatic human rights, gender reassignment, gender identity, transgenderism, legal regulation, gender.

INTRODUCTION

The issue of regulating the right to change gender includes not only legal but also religious, moral and ethical, socio-economic aspects. From somatic rights to the independent category the right to change (correction) of sexuality stood out. This right has been studied not by chance, but due to a number of factors: low research interest; updating national legislation; the extensive case law of the European Court of Human Rights (ECtHR) in this context; variety of problems in the field of transsexuality.

According to the well-known scientist in the field of somatic human rights O. Starovoitova, the right to the body and its legal regulations cover a set of somatic rights based on the worldview belief in the "right" of man to dispose of his body and organs, ie create and eliminate them, "restore" or "modernize" (Storovoitova, 2006). As V. Kruss, notes that these are the rights that allow for "fundamental reconstruction", change the functional capabilities of the organism and expand them with technical-aggregate or medicinal means (Kruss, 2000). The study of the semantic meaning of the word "reconstruction" led to the use of the principle of analogy of law and the search for a legal definition of this concept in other areas, where it is understood as re-equipment of existing production facilities, design changes, changes in basic technical characteristics.

The ratio of available definitions gives grounds to claim that the right to change (correction) of gender is a somatic right, as it allows for fundamental human reconstruction through gender reassignment.

MATERIALS AND METHODS

Given the novelty of the issue and the lack of a clear international understanding, different countries have different perceptions of the ban on gender reassignment, even within Europe: 14 countries view discrimination based on transgender identity as a form of sex discrimination; 2 Member States – as discrimination of sexual orientation; 11 Member States have no law or case law to determine the form of discrimination. The difference between gender discrimination and discrimination of sexual orientation is very large, because in the first case the law on equal treatment between men and women is used. On 27 April 2006, the Court of Justice of the European Union confirmed that discrimination on the grounds

of redistribution of sex should be considered as discrimination on grounds of sex (Strus, 2019).

In the field of transsexuality, the transformation of a woman into a man and, conversely, a man into a woman is possible. And recently, sex reassignment surgery is gaining popularity around the world. It is quite active in countries such as the United States, Iran, Thailand, Russia and Belarus.

The interest of gender research and the relevance of gender reassignment are related to modern socio-cultural changes, which have led to the emergence of women in many areas and actualized interest in gender.

Denial of sex (discrepancy between the anatomical sex of an individual and his gender identity (mental sex)), ie transsexualism, is one of the types of mental and behavioral disorders of the individual. According to most Western experts, the only effective method of treating transsexuality that gives more or less satisfactory results is surgical and hormonal correction of sex in accordance with gender self-identification, given the change of documents and socialization in a new gender role.

RESULTS

In Ukraine, the issues of gender reassignment and obtaining a medical certificate until 2016 were regulated by the Order of the Ministry of Health (hereinafter – the Ministry of Health) of Ukraine of February 3, 2011 № 60 "On improving the provision of medical care to persons in need of gender reassignment" (repealed in December 2016), which defined the general criteria for gender reassignment and contraindications for this. These included medical and social events, including those under the age of 18; the presence of children under 18 years of age; the patient's stay in marriage at the time of his application (Order of the Ministry of Health of Ukraine, 2011). In the same document, medical-biological and socio-psychological indications for the correction of sexuality were established, which are used in the presence of a number of conditions and contraindications.

In addition, the project "On the establishment of medical-biological and socio-psychological indications for change (correction) of gender and the form of primary accounting documentation" was proposed. This project effectively abolishes compulsory sterilization, observation in a psychiatric clinic, and provides the opportunity to obtain permission to change sex from an authorized commission.

In December 2016, another Order of the Ministry of Health "On establishing medical-biological and socio-psychological indications for changing (correcting) gender and approving the form of primary accounting documentation and instructions for its completion" came into force, stating that "socio-psychological indications for gender reassignment there is discomfort or distress due to the discrepancy between the individual's gender identity and the gender established at birth (and related gender role and / or primary and secondary sexual characteristics)" (Order of the Ministry of Health of Ukraine, 2015). These provisions of current legislation are in line with European standards for defining transgender rights, in particular gender reassignment.

The Council of Europe's Human Rights and Gender Identity Report calls for the eradication of sterilization and other forms of compulsory medical treatment as a prerequisite for the

legal recognition of a person's gender identity in the laws governing the process of gender reassignment (Scientific community, 2017). For example, in the Republic of Belarus over the past 20 years, about 70 such operations have been conducted (About 70 people have changed their gender…, 2014). However, such operations are much more common in the United States and other countries.

However, the disharmony of the individual in transsexualism naturally gives rise to numerous specific transsexual conflicts. They are always complex and manifest themselves as a kind of individual combination of internal and external conflicts.

A feature of transsexualism is a high burden of suicidal behavior. Its various manifestations were observed in 86.4 % of patients. However, in other countries such a procedure is carried out without much procedural difficulty. After the replacement of the passport or other identity document, the person is monitored for six months by specialists, how fully it adapts to the new gender. If necessary, she is provided with psycho-correctional, psychotherapeutic assistance for optimal social and psychological adaptation in a changed (according to the passport) gender. Only about 5 % of transgender people who have been renamed refuse surgery because they have had enough of being recognized in their new gender role. In our opinion, it is appropriate to first go through all the procedures for gender reassignment, and then change the documents, only then is it possible to become physiologically identical with persons of the same sex from birth, and this fact would be documented (SMIZONE, 2017).

The most controversial issue so far is the issue of succession in the event of gender reassignment, ie the transfer of rights and responsibilities from person to person to gender reassignment after such a change. Apparently, it is necessary to enshrine universal succession in the event of a person's gender change, which involves the transfer of all property, a set of rights and obligations belonging to the person to the successor, and it is not only about existing rights and obligations, but also future, not identified at the time of succession. It should be noted that succession should take into account the ability to accept such rights and responsibilities, the ability of a person (who has changed sex) to bear them (eg, military service, the right to an old-age pension, etc.), as these provisions form legal vacuum in the legislation. The new legal status of a person who has changed sex is established in full at the time of the final change of identity documents, and this should be the basis for succession in the event of a change of sex.

Succession in the event of a change of sex must be based on law, but the laws of many countries include inheritance, reorganization of a legal entity and some cases of contract law, gift, permanent rent (Civil Code of the Republic of Belarus, 2015).

Gender reassignment in foreign countries has a number of differences. In the Republic of Belarus, such an operation is free of charge, as it is based on transsexualism (NAVINY. BY, 2017), but in many countries such an operation is paid for by the person who wants to change sex. Thus, in Iran such an operation costs about 5 thousand dollars, the state can pay up to 50 % of the cost, in Thailand – 7–10 thousand dollars, in Russia – about 15 thousand dollars, in the United States – 30–40 thousand $ (Khudyakova, 2009).

By the way, the first sex reassignment operation was conducted in 1930–1931 (in several stages) in Germany. As a result, the artist Einar Wegener became the wife of Lily Elbe. Lily died of postoperative complications in 1931. The first specialized clinics appeared in France

during the sexual revolution. In 1978, an international professional association of doctors specializing in sex correction was established in the United States. In the USSR, the first such operation was conducted in 1970 in Latvia, then in 1992, and in Belarus (Khudyakova, 2009).

Gender reassignment surgeries are now being conducted in many countries. For example, in the United Kingdom in 2000–2010, 853 men became women through surgery and only 12 women became men. In 2010, 143 gender reassignment surgeries were performed in this country, and this figure has almost tripled in ten years. The average age of a Briton who has decided to have a sex change is 42 (Khudyakova, 2009). The leaders in the number of such operations are Thailand and Iran.

In some foreign countries, the issue of gender reassignment is still not regulated by law, so citizens who want to change their gender, seek help in international courts. There is a well-known case, for example, of a Lithuanian transsexual, L., who was denied sex reassignment surgery in his country and won a case against his country in the European Court of Human Rights. And in 2007 the ECHR ordered Lithuania to pay L. non-pecuniary damage in the amount of EUR 5,000 (LTL 17,200). In addition, the country was obliged to adopt a law on the procedure for sex reassignment within three months, otherwise the amount of the fine increased by another 40 thousand euros. However, Lithuania decided not to pass the law, but to pay the entire fine. He performed an operation to change the male to female sex in Belarus (Khudyakova, 2009).

Thus, the institution of gender reassignment is quite new to many countries, so there are many problems with the legal regulation of its provisions and the provisions that result from gender reassignment. For example, with the proliferation of same-sex unions in the United States, the problem of establishing paternity or maternity of persons raising children in same-sex unions has arisen in practice. In almost all states, same-sex marriage is prohibited. However, in most cases, when considering such cases, paternity (maternity) of two men (women) at the same time cannot be legally established. The courts only protect certain parental rights of such persons, most often the right to communicate with the child and to participate in his upbringing. Therefore, when raising children in same-sex unions, legal paternity or maternity may be established and certified only in respect of one of the members of such a family and if there are grounds established by law.

Gaps in legislation often concern the field of family law, namely marriage, adoption, paternity, military service, succession and a number of other issues. However, what should be done in the marital relationship that happens with the marriage, does it continue to exist?

It should be noted that on September 14, 2021, a resolution of the European Parliament was adopted, which calls for the recognition of same-sex unions – both marriages and civil partnerships – throughout the EU (Cathedral, 2021). However, in Art. 21 of the Family Code of Ukraine provides a definition of "marriage", which does not allow the conclusion of its "same-sex form": "Marriage is a family union of a woman and a man, registered in the state registration of civil status" (. Family Code of Ukraine, 2002). Therefore, the implementation of same-sex marriages in Ukraine is currently not provided by law.

Many current studies on gender focus not on the presence or absence of psychological differences between the sexes, but on their sociocultural determination and implications for

personal development, socio-psychological adaptation and self-realization, and family life is known to be largely mediated by cultural scenarios (Voronina, 2012).

As you know, the current family law establishes the presumption of paternity and maternity in the question of the origin of children from certain persons. As same-sex marriages are prohibited in Ukraine, the situation of paternity and maternity in a same-sex union is not regulated.

It should be noted that the social phenomenon of "same-sex union" has existed for a long time, but it is usually not mentioned in most societies, states and historical epochs. States have concealed such "deviations" in every possible way, saying that such phenomena do not exist. In the XX century. The concept of "same-sex union" first became the subject of jurisprudence when, on June 7, 1989, Denmark passed a law allowing same-sex couples to register their relationship. In the same year, 340 same-sex couples were registered there (270 – male / male and 70 – female / female). And already in 1993 such an "example of regulation of same-sex unions" was followed by Norway (where the share of same-sex partnerships in 1993 was 0.84 % of the total number of marriages) and Sweden (where such a share was 0.99 %) (Boldizhar, 2021).

In 1996, Iceland, with a population of just over 280,000, also adopted a Registered Partnership Act. In the same year, 21 same-sex unions were registered. All records were broken by the Netherlands, where in 2001, immediately after the entry into force of the law legalizing same-sex marriage, 2,432 same-sex marriages were registered (1,325 – male / male and 1,107 – female / female).

Currently, the number of states that legalize same-sex marriage is growing, improving the legal structure of such a union, the form, scope of rights and responsibilities (Boldizhar, 2021). However, the issue of same-sex unions and the legal consequences of the legislative solution of such unions in foreign countries has been little studied. Because "spouses" in a homosexual marriage are completely equal in legal status with persons who are in a traditional marriage, the only difference between such couples is the same sex. Same-sex partners who are married are given the same amount of rights as same-sex couples, taking into account the right to artificial insemination and the right to adopt (adopt) children. Therefore, the concept of "marriage" in its legal sense is also applied to same-sex unions. However, with the institution of marriage should be distinguished parallel institution of registered partnership, similar in many respects to marriage. In fact, it is a specially created legal structure aimed at both the protection of traditional marriage (union between a man and a woman), and the normative consolidation of the realities of the existence of permanent same-sex relationships. This design gives partners much the same rights and responsibilities as a married couple, with some exceptions: a ban on the adoption of children, the impossibility of artificial insemination, and some others (Lesur & Linsky, 2013).

However, in most countries such differences are gradually disappearing and the institution of registered partnership is almost no different from the institution of marriage. And in some countries (such as the Netherlands) both institutions are recognized, and marriage registration is open to both heterosexual and same-sex couples (Boldizhar, 2021).

According to world statistics, in each society on average about 4 % of people have a non-traditional sexual orientation, but even this percentage must be regulated by law (Boldizhar,

2021). It is the state's denial of the existence of such a fact, the lack of proper regulation that can lead to arbitrariness, because if a same-sex union is not recorded anywhere, then it is not controlled. However, we do not mean the mandatory registration of same-sex unions, but the fact that the state should develop a mechanism for regulating such relations, which would include accounting, statistics, and so on.

The possibility of raising children by same-sex parents is now widely discussed. In most countries, this phenomenon is possible through the adoption of each other's children (for example, when there are children from the first marriage), through artificial insemination or through adoption (adoption). The central link in such a chain is the question of the possibility of a full-fledged mental education of the child in such a union. The society is dominated by two opinions:

1) proponents of legalizing same-sex couples believe that a child needs a family in any case, and it does not matter whether it is traditional or not. Double child care is a priority, as there are no statistics showing that children in same-sex unions are happier than children in same-sex unions;

2) opponents of the legalization of same-sex unions are convinced that same-sex marriages in principle contradict the dogmas of the world's major religious denominations. There is a negative attitude towards same-sex unions and their categorical non-recognition. The issue of the division of status in a same-sex union is also debatable, and the issue of establishing paternity and / or maternity remains unknown.

In the United States, the laws of Florida, Mississippi, Nebraska, Oklahoma, Utah, and Virginia have laws that prohibit same-sex couples from adopting children. At the same time in California, Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, Vermont, Washington, adoption is allowed by a second partner in a same-sex couple by court decision or in the manner prescribed by law (Melnyk, 2016).

In other US states, courts have also allowed same-sex couples to adopt a second partner's child, although there is no general law or court order. Courts in the same state, but in different jurisdictions, may make conflicting decisions.

Single-parent adoption is legal in all states of the United States except Florida. This allows same-sex couples to adopt children in jurisdictions where adoption by two partners is not allowed, although only one partner will be the official guardian. An exception to this rule exists in the state of Utah, which prohibits the adoption of "a person who is in a relationship that is not a registered marriage", which, however, gives a legal opportunity to a single person to adopt children, but makes it illegal to adopt a couple living together, regardless of sexual orientation. Critics of such a prohibition policy also point to the fact that although in many states there is a ban on same-sex adoption, these same couples can act as guardians without the child's right to live with them (Melnyk, 2016).

In Canada, adoption is the responsibility of the local government, so the law varies by province or county. Same-sex adoption is legal in provinces such as British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec, Saskatchewan and the Northwest Territories. In the province of Alberta, it is allowed to adopt the child of a second partner. Same-sex adoptions are illegal in New Brunswick, Prince Edward Island and Nunavut. In the Yukon, adoption law allows for two interpretations. Member of Parliament

from the New Democratic Party Libby Davies advocates the introduction of the same national standards for adoption in same-sex couples (Melnyk, 2016).

DISCUSSION

In February 2006, the French Court of Cassation ruled that both partners in a same-sex union could have parental rights over the partner's biological child. This decision was made in the case of the transfer of rights to two daughters of one woman to her partner in a civil union (Judgment of the European Court of Human Rights…, 2012). Note that France became the fourteenth country in the world and the ninth in Europe to legalize same-sex marriage and same-sex adoption. Adopted on 17 May 2013, Law № 2013-404, which allows same-sex couples to marry same-sex couples living in France, including foreigners, provided that at least one of the partners has a permanent residence in France whether a resident of France. Same-sex marriages concluded before the adoption of this Law are also recognized (French law No. 2013-404, 2013).

On 2 June 2006, the Icelandic Parliament voted in favor of a proposal to allow adoption, upbringing and assistance in artificial insemination for same-sex couples along with heterosexual couples. The decision was taken unanimously and came into force on June 27, 2006. Australian law allows adoption in the federal capital and in Western Australia. Adoption of a second partner's child is possible in Tasmania. In January 2005, a decision of the Supreme Court of Israel allowed same-sex couples to adopt the child of a second partner. Earlier, limited guardianship rights for bloodless parents were allowed in Israel. In 2007, on behalf of the Catholic adoption agencies in the UK, which account for a third of all charities, they said they would close if the government issued an order ordering them to be treated as foster parents, among other candidates, and same-sex money (Same-sex marriages in Iceland, 2021).

With the recognition of same-sex marriages in the Netherlands, the law on adoption has also changed. Thus, from April 1, 2001, two women or two men can adopt a child in this country. However, this only applies to children who reside in the Netherlands. Today, only heterosexual couples can adopt a child from another country (Lukyanyuk, 2021).

The Dutch law of 1 April 2001 also provides for adoption by homosexual couples. Therefore, children raised by two persons of the same sex are protected by law, regardless of whether they are married or not. The only requirement is that they must have lived together for at least three years and raise a child together for at least a year before applying for adoption.

The required period of cohabitation and care of the child by a partner (actual or legal) is the same as in the case of adoption by two persons: cohabitation with the child's father – at least three years, period of child care – at least a year. This last requirement (one year) is not mandatory if the child was born in a lesbian union and the mother's partner wants to adopt her. The latter may apply for adoption immediately after the birth of the child. This rule applies regardless of the form of cohabitation (marriage, registered partnership, actual marital relationship). However, two women must also live with each other for at least three years (Lukyanyuk, 2021).

The case law of the European Court of Human Rights on the possibility of adoption by same-sex couples is very interesting, due to the peculiarities of national legislation on

this issue. For example, the Grand Chamber of the European Court of Human Rights fined Austria 38,000 euros for discriminating against same-sex couples - women challenged the right of the country's authorities to deny one of them the right to adopt the son of another. In particular, two 46-year-old women have been living together for many years and are raising a son, one of whom was born out of wedlock in 1995. Shortly after the birth of the child, the mother's friend as the second father decided to adopt him and submitted a request (Hertz, 2018).

In 2005 and 2006, district and regional courts denied adoption to a homosexual couple, noting that under Austrian law, only two people of the opposite sex can be parents. In addition, the court took into account that the boy's biological father sees the child regularly. In September 2006, another appeal was rejected by the Supreme Court, considering the provisions of the Civil Code fully in line with the Constitution (Collection of educational materials…, 2018).

In 2007, the women appealed against the national court's decision to the European Court of Human Rights. They claim that the Austrian authorities discriminated against them on the grounds of sexual orientation, as the adoption of a child would be possible in the case of a heterosexual union, even if the partners were not married. According to them, Austria violated Art. 14 and Art. 8 (prohibition of discrimination and respect for private family life) of the European Convention on Human Rights (hereinafter - the Convention). In June 2012, the case was transferred to the Grand Chamber of the European Court of Human Rights. The Court held that there had been a violation of Articles 14 and 8 of the Convention in comparing the plaintiffs' situation with that of an unmarried couple where one of the partners wished to adopt the other partner's child. By 11 votes to 6, the court ordered the Austrian authorities to pay the victims € 10,000 in compensation for non-pecuniary damage and € 28.4 thousand in legal costs within three months.

CONCLUSIONS

Article 8 of the Convention, aimed at protecting a person from arbitrary interference by public authorities. In addition, it creates positive commitments inherent in true "respect" for family life. In all circumstances, the importance of maintaining a fair balance between the opposing interests of the individual and society as a whole should be taken into account, with the state having certain limits of discretion. Since Art. 51 of the Constitution of Ukraine clearly states that marriage is based on the free consent of women and men, so it is too early to talk about the mechanism of same-sex marriage in Ukraine, as this institution is not enshrined in law. National law also prohibits adoptive parents who are same-sex or unmarried foreigners.

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CERTAIN THEORETICAL AND LEGAL ASPECTS OF CITIZEN PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS

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Abstract. The article is devoted to the key principles of citizens' participation in the management of public affairs. The connection between the right to participate in public administration and democracy is revealed. It is established that democracy obliges the state to create conditions for citizens to exercise their right to participate in all stages of socially significant decisions. The concept of «participatory democracy», which arose as a result of expanding the possibilities of a democratic state and legal regime and the transition to a human-centric concept of governance, is analyzed. It has been proven that in the phrase «participatory democracy» participation is understood much more broadly today than before. Thus, if the ancient Greek thinkers spoke only of political participation, then with the development of statehood and changing priorities in the activities of public institutions, it is already a question of public participation. The author identifies the basic principles of citizen participation in public administration, in particular: 1) the presence of a specific goal; 2) creating conditions for feedback; 3) alternative; 4) creating conditions for active public participation at the stage of preparation of management decisions; 5) involvement of the maximum number of participants in the discussion and adoption of the relevant management decision; 6) providing adequate open and complete information on public interaction; 7) openness and controllability of the process of public participation, the ability to formulate only realistic goals; 8) the use of quality methodological framework for the organization of the process and control over its results. The article examines the content of acts of international law on public participation in public administration, as well as the recommendations of the Council of Europe on ensuring the state's proper level of citizens' participation in public administration. The key principles of citizens' participation in public administration are presented.

Keywords: public participation, public administration, public affairs management, electronic participation, good governance.

INTRODUCTION

One of the fundamental principles of democracy is to ensure public participation in the management of state affairs. Recently, the involvement of citizens in making socially significant decisions at both the state and local levels, both individually and collectively, offline and online, has become more important than ever.

The importance of ensuring the participation of citizens in public administration is emphasized by numerous international regulations and recommendations. These include

the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (1950), the Council of Europe Convention on Access to Official Documents (2009), the Recommendation of the Committee of Ministers of the Council of Europe to Member States on balanced participation of women and men in political and public life. Decision-Making (2017), Code of Best Practice for Public Participation in Decision-Making (2009), Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in Local Government (2009), Recommendation of the Committee of Ministers of the Council of Europe Public Life (2001), Guidelines for Public Participation in Political Decision-Making (2017), etc. (Yaitska, 2021).

Before analyzing the legal regulation of citizens' participation in public administration, it is appropriate to consider the theoretical foundations of such participation. Thus, the purpose of the article is to determine the basis of public participation in the management of state affairs, its role in a democratic society.

MATERIALS AND METHODS

Both philosophical, general scientific and special legal research methods were used. The study of the nature of public participation in public administration is impossible without an analysis of the meaningful connection between democracy and the right of citizens to participate in state affairs. The synthesis of scientific approaches to the understanding of democracy, highlighting the key features of a democratic state and legal regime allows us to outline the importance of community participation in public administration. For a thorough analysis of the nature of citizens' participation in the management of public affairs, theoretical developments, practice materials and regulations in the field of public administration were used.

RESULTS

The formation and development of a democratic state governed by the rule of law is impossible without the inclusion citizens, i.e. individuals who are interested in solving certain issues of state and public life, in the governance process at the level of the authorities. The inextricable link between democracy as a whole and the right to participate in public administration as part of it, are explained by highlighting the key and indisputable features of a democratic political regime.

Firstly, democracy, meaning the power of the people, is considered to be the most favorable for the state state and legal regime, and at the same time it is a certain ideal, the maxim, which is sought by many modern states, including Ukraine. The basis of any democratic state and legal regime is the origin of state power from the people, the recognition of citizens as the greatest social value and priority in the activities of public institutions.

Secondly, a democratic state is dominated by fundamental values such as the rule of law, justice, equality, publicity and transparency. The power structures created in the state exist exclusively to protect the rights, freedoms and legitimate interests of citizens. Arbitrariness of power, illegal coercion, other violence, etc. are excluded.

Thirdly, and most importantly, since democracy involves the voluntary transfer of power from the people to authorized and approved entities, it cannot exist and develop fully without proper functioning and effective mechanisms for public participation in the management of public affairs. Democracy precludes a situation in which the only way for citizens to participate in public administration is to agree or disagree with the government's decision. Instead, it obliges the state to create conditions for citizens to exercise their right to participate in all stages of socially significant decisions.

Thus, under a democratic state and legal regime, a citizen can be involved in defining the goals and objectives of the state, its institutions in certain areas, offer their own vision of state development, complain about illegal actions of government, other citizens, organizations, be present at discussions and resolving issues that directly affect him, as well as obtaining a solution based on the law and respect for human rights.

Despite the deep historical roots of democracy, its content has always been the subject of scientific debate. In ancient times, democracy was interpreted differently by Aristotle, Democritus, Plato, Socrates and other philosophers. They changed its characteristics, preferring the balance of law and authority, the concept of «majority power», the idea of «common good», but were unanimous in the mandatory involvement of the public (community) in the governance process in a democracy.

Today, scholars talk about the concept of «participatory democracy», which arose as a result of expanding the capabilities of a democratic state and legal regime and the transition to a human-centric concept of governance. In the phrase «participatory democracy», participation is understood much more broadly today than before. Thus, if the ancient Greek thinkers spoke only of political participation, then with the development of statehood and changing priorities in the activities of public institutions, it is already a question of community participation. At the same time, it should be noted that, in our opinion, participatory democracy should not be understood as a type or form of democracy, but as a new model of democracy, which arose as a result of increasing the role of public participation in governance.

Political participation is a multifaceted phenomenon, but in any interpretation it is inextricably linked to the political process in the country. Yes, the functions of political participation are as follows:

1) socialization of an individual;
2) expression of various group interests and requirements;
3) prevention and resolution of conflicts in society;
4) identification and involvement of public leaders and civil servants in management;
5) involvement of the population in the development and implementation of political decisions;
6) combating bureaucracy and overcoming the alienation of citizens from politics and government.

Political participation involves a group of political rights of citizens, defined by numerous regulations. One of the first acts of international law, which clearly established the list of political rights of citizens, was the International Covenant on Civil and Political Rights of 1966. Yes, Art. 25 of this act states:

«Every citizen should have the right and opportunity without any discrimination:

a) to participate in the conduct of public affairs both directly and through the mediation of freely elected representatives;

b) vote and be elected in truly periodic elections, which are held on the basis of universal and equal suffrage by secret ballot and ensuring the free will of voters;

c) have access to civil service in their country on general terms of equality».

As we can see, the Act of International Law of 1966 does not mention the participation of citizens in public administration at all its stages, the involvement of the public not only in decision-making, but also in the development of public policy.

With the development of theory and practice of state administration, the fundamental transition from understanding the state as the highest institution of power, which decisions are not contested and always in accordance with the law, to its interpretation as the executor of the will of the people, in particular with the concept of «service state» should be based on the principles of:

1) the presence of a specific goal;
2) creating conditions for feedback;
3) alternative;
4) creating conditions for active community participation at the stage of preparation of management decisions;
5) involvement of the maximum number of participants in the discussion and adoption of the relevant management decision;
6) providing adequate open and complete information on public interaction;
7) openness and controllability of the process of public participation, the ability to formulate only realistic goals;
8) the use of quality methodological framework for the organization of the process and control over its results (Mamontova, 2018).

Community participation in the modern sense is designed to establish not only formal but also constructive, effective cooperation between citizens and the state, to oblige the state to take into account the views of its people. Participatory democracy, which emerged as the direct participation of the public in addressing the life of the individual community, is now becoming a large-scale and effective mechanism in practice. At the same time, participatory democracy does not exclude forms of representative democracy. The key goal should be a successful combination of different means of public influence on the implementation of state power (Yakymovych, 2019).

Thus, today's actualization of the institution of direct participation of citizens in public administration is associated with the expansion of the content of democracy and requires the establishment of convenient and effective mechanisms for community involvement in the management of state affairs.

Before proceeding to the analysis of the peculiarities of the implementation of mechanisms for citizen participation in the management of state affairs, it is necessary to dwell on the contradictions of terminology used in various sources.

Thus, in the main national law of Ukraine – the Constitution of Ukraine – the term «participation in the management of public affairs» is used. At the same time, other laws

also use the terms «public participation», «citizens' participation», «public initiative» and so on. The science of administrative law has developed the term «participatory mechanism», which comes from the English word «to participate» («participate») and includes all forms of community participation in public administration. It should be noted that international regulations contain different concepts: public participation, citizens' participation, engaging in state affairs, participation in public administration, governing etc. Despite the reasonable advantage of unification of normative terminology used to denote a single phenomenon, in the case of the term «community participation» there are no law enforcement problems.

However, the situation is somewhat different with regard to the process in which such participation actually takes place. Common concepts of «administration of state affairs», «public administration», «public governing», «governance», are close to some extent, but cannot always be used as identical.

Thus, "administration of state affairs" is a broad concept and includes the management of all spheres of human life, and in this sense it coincides with the term «public administration», but the latter may also include such management, which is not necessarily implemented by the state (for example, management carried out by public organizations). «Public governing» arose in connection with the popularization of the concepts of «new public management» and «good governance», in which the role of the state is reduced to the «manager» of public life by analogy with business terminology. «Governance» comes from the word «government» and focuses on executive activities. In view of this, we prefer the concept of «public administration».

Considering public administration as a mechanism, system, it should be noted that an important role in it is given to the «human factor», i.e. human influence on state formation, its application of knowledge, experience, skills in the realization of their own capabilities. Studying the role of anthropocentrism («human factor») in the state mechanism, scientists point to the following:

1) anthropocentrism in public power (state system) is realized through the political rights of the citizen, the key of which is the right to participate in the management of public affairs;

2) the main legal means of realization of the human factor in the state mechanism are rights and discretionary powers (sometimes responsibilities);

3) anthropocentrism allows the mechanism of state power to be flexible, dynamic, adapted to current trends in society and at the same time (due to legal regulation) not to lose the key patterns of their own functioning.

Democratic public administration involves minimizing this factor in the activities of subjects of power. For example, today there is a tendency to limit the discretionary powers (discretion) of state representatives. At the same time, the individual is guaranteed the right to choose among the maximum number of opportunities to participate in public administration. At the very least, the citizen has the right to determine for himself whether he wishes to participate in governance at all, and if so, in what form.

Thus, the process of exercising the right to participate in public administration has certain features, which are explained by the transition from the acquisition of a person's right to its proper use in the state mechanism.

Firstly, a citizen can participate in public administration only in active form. Thus, the fact of electing a person to a representative state body is not yet considered his participation in public administration. Citizens' participation in governance always requires active action, even if they are involved in the governance process at the initiative of the subject of power.

Secondly, participation in public administration, although it involves citizens in this process at all stages, but takes place exclusively within the forms and mechanisms defined by law. For example, a citizen may lodge a complaint with a subject of power, as this is provided for by law, but cannot take part in a parliamentary vote because it is not available to all citizens.

Thirdly, the participation of citizens in the management of state affairs is possible: 1) on their own initiative; 2) at the initiative of the subject of power. However, the initiative of the latter does not mean coercion. Thus, the forms of participatory relations at the initiative of citizens conditionally include:

- citizens' appeals, including electronic petitions;
- information requests of citizens;
- public (expert assessment);
- public hearings;
- participation in the activities of public authorities, etc.

Forms of participation in management at the initiative of the government include:

- informing;
- Ombudsmen;
- identification of public opinion;
- meetings and consultations with the population;
- public (expert) councils, etc.

Regardless of who is the initiator of the participation of citizens in public administration, the state is obliged to normatively and organizationally ensure the exercise of the right to such participation.

The study of the legal nature of public participation in public administration requires an analysis of the content of the provisions of fundamental acts of international law. As already mentioned, one of the first acts outlining the rights of citizens to participate in public administration of a political nature was the International Covenant on Civil and Political Rights adopted in 1966. In addition, the rights of citizens to participate in public administration are reflected in other acts of international law.

In particular, the basic principles of citizen participation in the management of public affairs are set out in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters adopted in 1998. Although this act is limited in scope (concerning the environment), it establishes the necessary general conditions for public participation in making important decisions:

1) promote accountability and transparency of the decision-making process and strengthen public support for decisions;

2) the desirability of transparency in all branches of government;

3) the public should be informed about the procedures for participation in the decision-making process, have free access to these mechanisms and know how to use them;

4) to promote the dissemination of knowledge for a better understanding of the structure and stages of the management process by citizens, to encourage comprehensive public awareness;

5) the importance of using the media, electronic and other means of communication;

6) state bodies have information in the public interest;

7) effective judicial mechanisms should be available to the public, including organizations to ensure the protection of its interests and the rule of law, etc.

In order to maintain and enhance transparency in the activities of public bodies, the public should be informed about and involved in the management process at all stages where possible. States are committed to ensuring effective public access to information on ways and forms of public participation in public administration.

According to the provisions of the UN Convention against Corruption adopted in 2003, one of the most important conditions for preventing and combating corruption is public involvement in the governance process, their interest in reforming state institutions, and training programs that enable citizens to understand how they can influence public affairs value.

Convention law defines the responsibilities that member states voluntarily agree to abide by, but details of legal mechanisms are found mostly in acts of recommendation of international institutions, which determine the patterns of proper organization of a procedure in the state.

Among the international acts on public participation in public administration, special attention should be paid to the provisions of the Code of Best Practice for Public Participation in Decision-Making, adopted by the Conference of International Non-Governmental Organizations of the Council of Europe in 2009. The recommendations set out in the Code are aimed at strengthening the role of civil society in a democratic state, expanding the scope of interaction between citizens and public authorities.

The Code considers public participation as a lever for democratization of the state and emphasizes its importance not only in the decision-making stage, but also in policy development. Among the principles of public participation in public administration are:

1) free and accessible participation process based on agreed parameters;

2) trust and honesty in the interaction of actors and various sectors of society;

3) activities in the public interest require openness, responsibility, clarity, accountability from both non-governmental organizations and public authorities, ensuring transparency at all stages;

4) independence of participants in public-state cooperation.

Citizens' participation in the management of public administration is considered at four main levels:

1. Access to information, which consists in the systematic and high-quality publication by state institutions of information on their activities.

2. Consultations. Authorities ask the public for their views on a particular issue, informing them about the current state of politics and governance. Public discussion includes the organization and holding of conferences, forums, public hearings, round tables, meetings, meetings (meetings) with the public; Internet conferencing, video conferencing, etc. Today,

the relevance of electronic public consultations is increasing. The responsibilities of public authorities include the elaboration and generalization of proposals and remarks expressed in citizens' appeals on issues that require the study of public opinion.

The provisions of many pieces of legislation define the duty of the authorities to assist citizens in forming and disseminating their own opinion on a particular area of public policy. However, the analysis of the provisions of the legislation shows a more significant role of interaction with the state at the initiative of individuals. In the absence of an active position and a desire to participate in public governance, the existence of such forms of public participation loses its meaning.

3. Dialogue, which, unlike consultations, can be initiated by both citizens and representatives of the state. Dialogue can be unlimited and specific. Unrestricted dialogue is a two-way communication based on mutual interests and potentially common goals, in order to ensure a regular exchange of views. Its boundaries can range from open public hearings to specialized meetings between NGOs and public authorities. The range of issues for discussion is not limited, and the discussion is not directly related to the current political process.

A concrete dialogue is based on mutual interests in relation to a particular political process. Such a dialogue usually leads to the development of a joint recommendation, strategy or bill. A concrete dialogue is more effective because it consists of joint regular meetings and aims to develop key policy strategies and often leads to agreed results.

4. Partnership. In contrast to dialogue, cooperation, partnership involves a common setting of goals and decision-making on equal terms, and therefore a shared responsibility of the state and the public. Partnership is the highest level of participation in public administration.

Among the comprehensive tools and mechanisms for public participation in governance, the Code focuses on electronic participation. Thus, electronic tools provide ample opportunities to improve democratic practices and the participation of organized civil society. They can make a significant contribution to increasing the transparency, accountability and accountability of government institutions, as well as encouraging citizen participation, empowerment and the accessibility and openness of the democratic process. In order to reach their full potential, electronic tools must be used by all participants in the decision-making process, including public authorities at all levels and organized civil society.

Thus, today the issue of expanding the number of forms of citizen participation in public administration online is relevant, which is a consequence of the digitalization of the management process as a whole. In Ukraine, the main tool for e-participation is the e-petition. The special need for proper regulation and development of this tool of e-democracy is associated with the chosen course of digitalization of state-public relations (Luchenko & Belikova, 2019).

Interaction of citizens with the subjects of public administration online is gaining importance in society because of the convenience and speed of obtaining the necessary information and sending suggestions and comments on the work of a government. At the same time, developing e-democracy of participation, it is necessary to focus not only on the resource provision of the system, but also on indicators of the effectiveness of participatory relations.

DISCUSSIONS

To date, no comprehensive study of public participation in public administration has been conducted in Ukraine. The scientific works of Yu. Barabash (2021), M. Belikova (2019), A. Yemelyanova (2019), E. Mamontova (2018), N. Mishina (2020), D. Luchenko (2019), and others consider certain issues of citizens' participation in the management of state affairs.

Examining the content of the right to public participation in the management of state affairs, N. Mishina defines the right to participate as a set of individual and collective rights exercised in a democratic society by persons involved in the administrative process *(Mishyna, 2020).* Without denying this understanding, we note that the right to participate in the management of public affairs should be interpreted as a set of opportunities for a citizen to be involved in the public administration process in various forms.

For the most part, scholars consider certain forms of citizens' participation in public administration, proposing changes to the legislation on the legal regulation of mechanisms for their implementation. Today, the topic of e-participation as a kind of e-democracy is extremely relevant. It should be noted that this is only a form (external expression) of citizens' participation in government, it should not be separated from forms of interaction between citizens and the state offline and opposed to them as more effective, because, in our opinion, if the state has effective mechanisms for public involvement into management of public affairs, all forms of such cooperation will be effective.

Researchers are studying the electronic petition as a special form of citizens' appeal. In particular, the imperfection of Ukrainian national legislation on this issue and the positive experience of European countries prompted D. Luchenko and A. Emelyanov to thoroughly analyze the mechanism of submission and consideration of electronic petitions (Luchenko & Belikova, 2019), (Emelyanova, 2019). Scholars have formulated proposals for amendments to the legal regulation of electronic petitions in Ukraine, and D. Luchenko has also developed a draft Law of Ukraine "On Electronic Petitions" (Luchenko et al., 2021).

In summary, the institute of public participation in public administration needs further comprehensive in-depth study of the conditions for forming mechanisms to involve the public in solving state problems, types, forms and methods of citizen participation in all stages of management decisions, identifying shortcomings and regulatory issues in exercising the right to participate in public administration.

CONCLUSIONS

Examining the nature of public participation in public administration, the relationship of the right to participate in the management of public affairs with democracy as a value and at the same time the goal of a modern progressive state, we can note the following.

Firstly, the participation of citizens in the management of state affairs is a multifaceted concept that covers all the statutory opportunities of the public, the implementation of which affects the activities of the state. Understanding the participation of citizens in public administration cannot be reduced to political rights, such as electing and being elected to representative bodies of state power, creating political parties, and so on. In the era of

participatory democracy, the public's ability to influence the process and outcome of public administration in the state is greatly expanded.

Today, a citizen can take part in the management of public affairs in many ways, both independently, on his own initiative and on the initiative of the subject of power, both individually and collectively, both offline and electronically. At the same time, a wide range of forms of public participation in public administration requires adequate legislative support. The first step towards strengthening the role of public opinion in a democracy should be to regulate the mechanisms of citizen participation in governance at the law level.

Secondly, the level of public confidence in the state as a whole plays a significant role in building relations between the active public and public authorities. The solution to the issue of low public trust in management structures can be not only the promotion of forms of participation in management (advertising, training, consulting, etc.), but also increasing the level of transparency of the state, minimizing administrative discretion (discretionary powers).

Thirdly, the participation of citizens in the management of public affairs must be in accordance with certain principles that directly affect the effectiveness of such participation:

1) the presence of a specific goal;
2) creation of conditions for constant convenient communication of the parties;
3) providing the opportunity to choose the form and method of participation in management;
4) creation of conditions for active participation of the public (convenience of ways of participation, transparency, openness in activity of public authorities);
5) involvement of the maximum number of participants in the discussion and adoption of the relevant management decision;
6) openness and controllability of the process of public participation, real and specific goals;
7) use of high-quality methodological base, including positive foreign experience for the organization of public participation in management.

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ENCOURAGEMENT AT WORK UNDER THE LABOUR LAW OF UKRAINE

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Abstract. Nowadays the problem of improving the legal regulation of encouragements in the labour legislation of Ukraine is especially topical, as the modern realities require the wider application of motivation and encouragement means to keep the most skilled employees. The Labour Code of Ukraine stipulates the requirement to the employees for performing their job responsibilities conscientiously. Analysing the norms of the Labour Code of Ukraine, we can conclude that encouragements are welfare of material or moral nature, benefits and privileges by which the employer marks the employee's labour merits. At the same time, the Labour Code of Ukraine does not contain legal consolidation of the "labour merit" concept. Article 139 of the Labour Code of Ukraine consolidates the employee's obligation to work honestly and conscientiously, timely and accurately to follow the order of the owner or its authorized body. However, scientists do not have a consensus if any conscientious performance of the task, within or exceeding, is legal ground to apply the encouragement means or there should be any achievements at work (increase in productivity, innovation, etc.), success at work. Thus, since merit is considered as a ground to apply the encouragement, the concept of labour merit needs to be legally specified. It is concluded that in order to motivate effectively the employees in the form of encouragement, it should be transparent and timely. To ensure the transparency, it is necessary to determine clearly the types of encouragements, grounds and procedure of their application in local regulations of the enterprise, as well as, to determine the indicators of work, according to which the employee is entitled to some type of encouragement. It is necessary to formalize the legal grounds and conditions of the encouragement, so that the employer is not guided by its own wishes. After all, based on the provisions of legislative acts, encouragement of the employee is a right, not an obligation of the employer (Article 144 of the Labour Code). So, it should decide for itself the expediency of applying (or not applying) encouragements to the particular employee. For timeliness, it is important to encourage employees not only on the days of professional holidays "for good", but every day to see a human of work. We share the position of those scholars who propose to separate the appropriate chapter in the Labour Code "Encouragements at Work", which will increase the role of encouragements in regulation of the labour relations.

Keywords: encouragement, labour merit, conscientious performance of job responsibilities, grounds to apply the encouragements, types of encouragements.

INTRODUCTION

At present, there are a set of problems in legal regulation of encouragements in the labour law that require for analysing them and searching the ways to solve them. The main legal problem of applying the encouragements is that, unfortunately, the legislation of the former USSR, which we are still guided by, does not take into account the needs of market relations and does not foresee any means of labour encouragement that are economically justified for the employer and beneficial to the employees.

Fast economic development requires for new approaches to legal regulation of the labour relations. Therefore, the labour law science task is to develop theoretical grounds that effectively regulate them. In modern difficult conditions, the problem of improving the legal regulation of encouragements to employees is particularly topical. The analysis of international labour legislation of Ukraine and international experience gives grounds to assert a need to shift the emphasis in the methods of ensuring the labour discipline by increasing the role of encouragement norms in regulation of the labour relations. It is important to rethink the importance of encouragement as the main method of ensuring the labour discipline.

K. Ye. Mashkov (2011) researched the legal regulation of encouragements for labour achievements. D. Ye. Kutomanov (2015), I. V. Marchenko (2016) analysed the encouragement as a method of ensuring the labour discipline, and G. Yu. Goncharov (2015) researched the encouragement as a mean of labour discipline. T. V. Kolyesnik (2018), I. V. Lazor (2011), S. I. Zapara (2006) analysed the types of encouragement. I. G. Kozub (2018) researched the content of the concept of conscientious performance of job responsibilities by the employee. G. V. Dzhepa (2013), O. O. Barabash (2012) analysed the principles of encouragement for labour achievements.

At the same time, a need to improve theoretical and methodological structure of encouragements in the labour law of Ukraine, lack of scientific research on this problem, imperfection of legal regulation in this area determine the topicality of comprehensive research of legal regulation of encouragements by the Ukrainian labour law.

The object of the study is the legal relations arising in the sphere of applying the encouragements to the employees. The subject matter of the study is encouragement at work under the labour legislation of Ukraine. The purpose of the study is to define the problematic aspects of legal regulation of encouragements at work in the labour legislation of Ukraine and the ways to improve legal regulation of encouragements to the employees.

MATERIALS AND METHODS

General and specific scientific methods of scientific knowledge make a methodological basis of the study. Thus, the norms of labour legislation of Ukraine regulating the application of encouragements to the employees were analysed by using the general methods. The conceptual apparatus was developed by using the logical and semantic method. The

encouragements as a holistic legal phenomenon were researched and its specific and general features were determined by using the system and structural method. The individual grounds for application of encouragements to the employees were defined by using the classification and grouping methods. The comparative analysis of the effective state of legal regulation of encouragements by the legislation of Ukraine and foreign countries was made by using the comparative and legal method. It provided an opportunity to determine the prospects to develop legal regulation of encouragements to the employee. Using the modelling method contributed to the development of proposals for further improvement of the labour legislation and the law enforcement practice. The authors in detail analysed the normative legal acts of Ukraine and researched the case law on the studied problem.

RESULTS AND DISCUSSION

First of all, we propose to define the concept of encouragement. P. D. Pylypenko determines the encouragement as a kind of positive assessment of the results of the employee's work in the process of performing his/her job function (Pylypenko, 2004).

To I. P. Zhygalkin's point of view, the encouragement at work is foreseen by the labour law norms public recognition of conscientious performance by the employee his/her job responsibilities (Great Ukrainian Legal Encyclopedia, 2018).

Consciousness is one of the most important criteria to determine the employee's will, an internal subjective stimulus that depends on the motives of consciousness, and absolutely does not depend on coercion, because it is impossible to force the consciousness as it is outside the threat of punishment (Karpenko, 2003).

Conscientious performance by the employee his/her job responsibilities is one of the requirements to the employee during performance his/her job function. The Labour Code of Ukraine (hereinafter – the Labour Code of Ukraine) points out on the necessity of such performance. Thus, Article 139 of the Labour Code (Labour Code of Ukraine, 1971) determines that employees should work honestly and conscientiously, to obey timely and accurately the orders of the owner or its authorized body, to adhere to the labour and technological discipline, the labour protection regulations, to care for the owner's property with which the employment agreement was concluded. The Standard Rules of Internal Labour Regulations also fix the obligation to work conscientiously. For example, the Standard Rules of Internal Labour Regulations for Employees of State Educational and Educative Institutions of a System of the Ministry of Education of Ukraine include the employee's obligation to work consciously (Standard Rules of internal labor regulations for employees of state educational and executive institutions of the Ministry of Education of Ukraine, 1993).

I. G. Kozub thinks that the consciousness should be determined at legislative level and the relevant provisions should be included in the Labour Code of Ukraine in order to avoid any conflicts and disputes (Kozub, 2018).

Analysing the effective legislation of Ukraine we point out that it does not contain a list of grounds to apply the encouragement means. According to Articles 48 and 143 of the Labour Code of Ukraine, the ground to apply such means could be, for example, some employee's achievements at work. Article 145 of the Labour Code of Ukraine details the ground to apply the encouragement. In Article 146 of the Labour Code of Ukraine the legislator set up another

ground to apply the encouragement as special labour merits of the employee. Although, there is no specification of the concept of such merits in the Labour Code of Ukraine.

Thus, the encouragements are welfare of material or moral nature, benefits and privileges by which the employer marks the employee's labour merits.

Unfortunately, the Labour Code of Ukraine does not contain legal consolidation of the "labour merit" concept.

In the scientific literature, merit is considered as a ground to apply the encouragement. At the same time, scholars emphasize the lack of study of this legal concept.

A clear definition of the concept of merit is a necessary condition for a proper law enforcement practice, because without determining the ground for legal encouragement, it is impossible to apply it. In practice, such uncertainty results in significant influence of a subject of encouragement on determining the presence or absence of the ground for such encouragement.

According to Article 140 of the Labour Code of Ukraine, the labour discipline at enterprises, institutions, organizations is ensured by creating the necessary organizational and economic conditions for normal high-performance work, a conscious attitude to work, methods of persuasion, education and encouragement for conscientious work. The Labour Code of Ukraine set up the encouragement for conscientious work as a mean of ensuring the labour discipline.

In D. E. Kutomanov's opinion, who researches the methods of encouraging the conscientious work in the system of methods of ensuring the labour discipline, any option to perform the task (within or exceeding the indicators) is a legitimate ground to apply the encouragement (Kutomanov, 2015).

To V. V. Nyrkova's point of view, encouragement is applied for aware and conscientious performing the one's job responsibilities (merit) or for achieving a socially useful result that exceeds the usual requirements (special merits) (Nyrkova, 2003).

The encouragement is a public recognition of the results of high-performance, high quality, impeccable and conscientious work of the employee. The ground to apply the encouragement is the conscientious performing the one's job responsibilities , i.e. not such a result as the attitude of the employee to his/her job responsibilities. At the same time, some authors note that the employee receives salary for conscientious attitude to his/her job responsibilities. Encouragement has always been a measure of high achievements at work.

M. I. Inshyn and V. I. Shcherbyna also recognize the merit at work of the employee as a ground to apply the encouragement, which includes two main legally significant options for behaviour: impeccable work and distinction. Impeccable work means the long-term conscientious and accurate performing by the employee a mandatory minimum of requirements for his/her position or work performed and the absence of the labour discipline violations. Distinction means performing by the employee such useful actions to the employer that significantly exceeds the general daily requirements for the performance of his/her job function (Inshyn & Shcherbyna, 2014).

I. V. Marchenko believes that the basis to apply the encouragement is the high-level performing by the employee his/her job responsibilities. Depending on this level, in scientific literature they distinguish exemplary labour behaviour of the employee, merit and special

merit. The author identifies three groups of the grounds to apply the encouragement: 1) achieving the exemplary results at work; 2) accurate and clear performing and over performing certain indicators; 3) excellent, conscientious daily performing the job responsibilities, regardless of any pre-established indicators and terms of work (Marchenko, 2016).

We believe that the ground to apply the encouragement is the employee's conscientious performing his/her job responsibilities. It means performing the job responsibilities in a strict accordance with the requirements for performing such work in a compliance with the rules and regulations established by the job descriptions, qualification characteristics of works, instructions and requirements for labour protection and other documents, governing the employee's job function in compliance with the effective rules of internal labour regulations of the organization.

The effective Labour Code of Ukraine does not contain a concrete list of the types of encouragement. Article 143 of the Labour Code of Ukraine provides the following: "Employees of enterprises, institutions, organizations may be subject to any encouragement listed in the rules of internal labour regulations approved by the labour collectives". Thus, the issues of encouragement are completely related to the sphere of local legal regulation. Certain measures of encouragement are determined in the Labour Code of Ukraine, namely: encouragement for achievements at work (Article 143 of the Labour Code); benefits and privileges to the employees who successfully and conscientiously perform their job responsibilities (Article 145 of the Labour Code); encouragement for special merits (Article 146 of the Labour Code). According to Article 9-1 of the Labour Code, "the enterprises, institutions, organizations within their powers and at their own expense may establish additional, in comparison with the legislation, labour and social benefits to the employees". We should note that a presence of certain means of encouragement in the Labour Code does not deprive the head of the enterprise its right to establish other types of encouragement that are directly related to performing the employee's job responsibilities in the specific conditions of such enterprise.

According to paragraph 21 of the Standard Rules of Internal Labour Regulations for Workers and Employees of the Enterprises, Institutions, Organizations, for exemplary performing the job responsibilities, increasing the labour productivity, improvement of the quality of production, long and faultless work, innovation at work and for other achievements at work the following encouragements should be applied: express gratitude; premium awarding; rewarding with a valuable gift; awarding the diploma; posting information about the employee on the "Board of Honour" in the Book of Honour, on the Board of Honour.

The rules of internal labour regulations may also foresee other encouragements.

In accordance with paragraph 22 of the Standard Rules of Internal Labour Regulations for Workers and Employees of the Enterprises, Institutions, Organizations, benefits and privileges in the field of socio-cultural and housing services (vouchers to sanatoriums and rest homes, improvement of living conditions, etc.) are given primary to the employees who successfully and conscientiously perform their job responsibilities.

For special merits the employees are presented to the higher authorities for promotion, awards, medals, diplomas, badges and are awarded by the honorary titles and title of the

best employee in the profession (About the statement of standard rules of an internal labor schedule for workers at employees of the enterprises, establishments, the organizations, 1984).

The list of encouragements, set out in the Standard Rules of Internal Labour Regulations for Workers and Employees of the Enterprises, Institutions, Organizations, is very outdated and does not meet the requirements of the time, modern requirements for motivation and encouragement at work.

According to the General Agreement between the Cabinet of Ministers of Ukraine, the Confederation of the Employers of Ukraine and the All-Ukrainian Trade Unions and Trade Associations for 2002–2003 (General Agreement, 2002), the Cabinet of Ministers of Ukraine undertook the obligation to develop and approve the Standard Rules of Internal Labour Regulations for Workers and Employees of the Enterprises, Institutions, Organizations during 2002 with a participation of the trade unions (paragraph 3.22 of this Agreement). However, this has not been done so far. Maybe, it was connected with rethinking of the "internal labour regulations" category and deregulation of the labour relations.

On January 29, 2003 the Methodical Recommendations on Organization of Material Encouragement at Work to the Employees at the Enterprises and Organizations were adopted (Methodical recommendations, 2003). In these Methodical recommendations the material encouragements are considered in the aspect of creating systems of reward to the employees, that is additional to the basic (tariff) wages, for exceeding the planned or regulatory levels of individual and collective production and management activities, as well as the end results of structural units or enterprises as a whole.

According to paragraph 3 of these Methodical recommendations, material encouragement at work of all employees at the enterprises is carried out by the following types and on such directions:

– premium awarding for the main results of production, economic, financial and economic, scientific and technical activities;
– applying the surcharges and allowances to the tariff rates and salaries;
– social systems of material encouragement.

Any system of material encouragement is based on a set of relevant indicators, the achievement, performing or over performing of which is a ground to apply the material encouragement.

As a rule, each system has two groups of indicators: the main indicators of encouragement and indicators of encouragement conditions.

The main indicator is the basis on which the amount of material encouragement (premium awarding, surcharges, allowances, encouragement payments, etc.) is determined or calculated.

Indicators of encouragement conditions determine the right to receive a certain reward established for achieving, performing or over performing the main encouragement indicator, and its size. In this case, the conditions of encouragement have two groups: basic and additional. In case of non-performance (non-compliance) of the main indicators of encouragement conditions, the remuneration is not paid in full, and in case of non-

performance (non-compliance) of the additional indicators of encouragement conditions, the amount of remuneration for the main encouragement indicator may be reduced to 50 percent.

The system of surcharges and allowances is divided into two types: the first – surcharges and allowances of encouraging (motivating) nature (for example, combining professions, expanding service areas, increasing the volume of work, etc.); the second – surcharges and allowances of compensatory nature depending on the working conditions (difficult and harmful working conditions, work at night or in a special mode, etc.). We will focus only on applying the surcharges and allowances of motivating, i.e. encouraging nature.

By the purpose, the surcharges and allowances are divided into three groups. Some of them are applied only to the employees, other – to professionals, specialists and technicians, the third can be applied to the both categories.

As a rule, the surcharges for expanding the service area, for labour intensity, for mastering the new labour costs, for mastering the new equipment and premium for high professionalism are applied only to the workers, as well as for the class – to drivers of cars and buses.

Premium for high achievements at work and for complexity and intensity at work, for knowledge and use of a foreign language, for scientific degrees (PhD, D.Sc.) and for scientific experience are applied to the professionals, specialists and technical staff.

The surcharges for combining professions (positions), for increasing the volume of work, for performing the job responsibilities of the temporarily absent employee, for mastering the new advanced technologies and allowance for performing particularly important works and tasks are applied to the workers, professionals, specialists and technicians.

The types and amounts of these surcharges and allowances are usually set in the general agreement (those that are inter-sectoral in nature), in the sectoral (territorial) agreements and in the collective agreements of the enterprises.

In the collective agreement, the enterprise could set both the types of surcharges and allowances specified in the agreements and its own surcharges and allowances.

Due to the production needs and financial capabilities, the enterprises have the right to set amounts of surcharges and allowances in the collective agreement that differ from the surcharges and allowances foreseen in the agreements. However, the amounts of these surcharges and allowances should not be lower, but only higher than the amounts foreseen in the agreements, because they are minimum state or sectoral (territorial) guarantees.

Social systems of the material encouragement are aimed, firstly, at consolidating the qualified personnel at enterprises, and, secondly, at improving social and material well-being of the workers.

According to paragraph 16.1 of the Methodical Recommendations on Organization of Material Encouragement at Work to the Employees at the Enterprises and Organizations (Methodical recommendations, 2003), these systems include participation in share capital and in distribution of profits by the payment of dividends to the employees who has shares from the enterprise's profits, as well as:

- rewards for the annual results of the enterprise's activity;
- payment for years of service (continuous work experience at the enterprise);

– payment of insurance premiums to the employees for medical, social and pension insurance at the expense of the enterprise;

– payment for rent, housing and communal services of the employees at the expense of the enterprise;

– payment for medical services provided to the employees (surgical operations, dentist services, long-term treatment, etc.) at the expense of the enterprise;

– payment for food for employees in the canteen of the enterprise;

– payment for maintenance of young children of the employees in kindergartens and nurseries at the expense of the enterprise;

– payment of certain amount to the employee for treatment or purchase of a permit during his/her regular leave;

– providing the employees the additional paid leave related to the family circumstances (burial, care for the sick, etc.).

All types of these rewards and payments are determined in the collective agreement or another document approved by the employer and agreed with the staff.

Terms and amounts of these rewards and payments are set depending on the results and quality of work of the employees, taking into account, in some cases, their social and marital status.

The rules of internal labour regulations of the enterprise establish certain types of moral and material encouragements. In addition, these issues may be regulated by other regulations, in particular, by provisions on premiums.

Thus, an establishment at the enterprise its own legal mechanism of encouragements and its consolidation in local acts creates for the employee the right to be encouraged, which should be applied when he/she achieve certain indicators at work.

According to the established case law, solving the disputes on premium awarding, remuneration based on the results of work for the year or for years of service, allowances and surcharges, it is necessary to proceed from regulations that determine the terms and amount of these payments. The employees who are subjects of these regulations may be deprived of such payments (or the amount of such payments may be reduced) only in the cases and under the conditions provided in these acts. Due to the lack of costs, these payments may be refused if according to these regulations they are due to the availability of certain costs or funding (Digest, 2020).

Just in local regulations should specify the types of encouragements, the grounds and procedure for their application, as well as indicators of resultative work under which the employee is entitled to some type of encouragements.

Thus, a clear regulation of the legal grounds and conditions of encouragement in local legal acts of the enterprise is beneficial primarily to the employees, as it significantly restricts the employer (or head of the enterprise) in the freedom to apply the encouragement, in choice of forms and means of encouragements.

The system of material encouragement should be flexible and constantly adapt to the real needs of the workers, which may include a need for additional paid leave, payment for medical services, subsidies for transportation costs, retirement assistance, education and retraining at the expense of the enterprise, etc.

Encouragement encouragements should provide moral satisfaction, taking into account the personal inclinations of the employees, their orientations, abilities, education, qualifications, culture and status.

The concept of neo-materialist motivation has emerged. Neo-materialist orientation does not deny the desire for material success, but considers it only as a prerequisite for self-expression and realization of higher interests and needs not directly related to the consumption (Kolot, 2011). Thus, the priority for the employees becomes an opportunity to develop their abilities and get moral satisfaction from their work providing them the adequate material support.

In scientific literature they propose various classifications of the encouragement. Thus, T. Kolyesnik separates the following types of encouragements:

1) material encouragement, and depending on the subject of the employee's needs they are divided into:

a) material and financial (monetary encouragement), which consist in providing the person material goods that meet his/her material needs;

b) material and social (non-monetary encouragement), which consist in creating the necessary conditions for highly productive work, improving the workplace, leisure encouragement, etc.;

2) moral encouragements, the essence of which is the official and public recognition of the achievements of the employees and their special role in the overall success of the enterprise;

3) organizational encouragements, which consist in a possibility of career growth, removal of previously imposed disciplinary sanctions, etc. (Kolyesnik, 2018).

Many scientists point out that the types of encouragements should be defined in legislation. In particular, I. Lazor proposes to consolidate special legal norm in the Labour Code of Ukraine defining the following types of encouragements for conscientious performing the job responsibilities and certain achievements at work:

1) material encouragement in the form of premiums, salary allowances, valuable gifts, etc.;

2) moral encouragement in the form of gratitude with entry in the employment record book, posting information about the employee on the "Board of Honour", awarding honorary titles, awarding diplomas, etc.;

3) status encouragement in the form of transfer of the employee to a higher position, improving the qualification characteristics of the employee, etc. (Lazor, 2011)

Regarding other criteria for the division of encouragements into types, the legal literature distinguishes the following ones:

1) by the subject of encouragement: individual and collective. Individual encouragements are applied to a specific individual employee for certain achievements at work or appropriate behaviour. Collective encouragements are applied to a group of employees who have achieved certain results through teamwork. In practice, encouragements are often applied individually. However, at the discretion of the employer, in some cases, encouragement measures may be applied to the brigades, departments;

2) by the scope: general and special. General encouragements are applied by the labour law to all employees regardless of the field in which they work. Special encouragements

apply to certain categories of workers by special laws, as well as sectoral regulations and disciplinary statutes. For example, paragraph 15 of the Disciplinary Statute of the Armed Forces of Ukraine contains a list of encouragements applied to the servicemen:

a) approval;
b) gratitude;
b-1) early removal of a previously imposed disciplinary sanction;
c) additional exemption from the location of a military unit or ship ashore out of turn (for conscripts and cadets of the higher military educational institutions, military training units of higher education institutions);
d) notification of the parents or staff at the place of work or study of the serviceman before conscription (enlistment in the military service) about his/her exemplary performing the military responsibility and the applied encouragements;
e) additional leave for up to 5 days (for servicemen of conscript military service);
f) diploma;
g) valuable gift;
h) cash prize;
i) posting information about the serviceman in the Book of Honour of the military unit (ship);
j) early assignment of the next military rank:
k) honorary badges;
l) departmental encouragement awards (Disciplinary Statute of the Armed Forces of Ukraine, 1999).

By the way, there is stipulated that every commander, within the limits of the rights granted to him/her by the Statute, is obliged to encourage the subordinate servicemen for diligence, reasonable initiative and conscientious performing the official responsibilities. The encouragement should be deserved. Choosing the type of encouragement, the commander takes into account the nature of the merits of the serviceman and his/her attitude to the service for the previous time.

3) by the territory of distribution: state and local. State encouragements are applied in accordance with the legislative acts or acts of central authorities and are expressed through the presentation of state awards, i.e. awards of the national importance (government awards, awards of the separate ministries). Local encouragements are applied to reward the employee with a certificate of appreciation, diploma or medal, the significance of which extends to the entire structure of the enterprise (corporate awards).

K. Mashkov also proposes to distinguish the following types of encouragements:

4) by the level of social significance of the employee's merits: encouragements applied to the employees for achievements at work and encouragements applied to the employees for special labour merits. In turn, the encouragements applied to the employees for special achievements at work can be: a) state awards; b) departmental awards;

5) by the conditions under which the encouragements are applied: encouragements applied on the ground of general assessment of the person's work for a definite period of time and encouragements applied to the employee for achievement of specific, pre-established performance indicators (Mashkov, 2011).

Taking into account the peculiarities of motivation at work and capabilities of the enterprise, institution, organization, S. Zapara separates the following types of encouragements to form the effective labour discipline:

1) material encouragement of the labour activity of individual and collective character: provision of housing to the employee; providing credit for the purchase of housing, car, etc.; wage growth which is adequate to the expansion of skills and abilities of the employee, the effectiveness of his/her result of work; premium awarding; rewarding with a valuable gift; provision of sanatorium and resort vouchers, etc.

2) improving the organizational and technical working conditions of the employee: repair of premises where he/she works; equipping office space with the modern office equipment, furniture; purchasing the literature, etc.

3) oral and professional encouragement to the employees: creation of psychologically comfortable working conditions to the employee; creating conditions for professional growth and realization of creative abilities of the employee; granting the creative leave; rewarding the employee with a diploma for achievements and successes at work, etc. (Zapara, 2006)

Such a classification is useful to improve the provisions of legislation and local legal acts. However, it is important that in practice such division is quite conditional, as there is a need to apply different types of encouragements and their combination. In addition, with the development of social relations, types of work, as well as the desire to move closer to the international standards in the field of labour, new types of encouragements are applied that also need consolidation and regulation under the nowadays conditions.

We should note that recently a new type of encouragement became quite popular, i.e. the free time premium, which means the release of the employee from his/her job responsibilities with the payment of wages during this time. It is a provision of additional paid leave, the right to choose a time of vacation, flexible working hours etc.

In the foreign companies, a lot of attention is paid to stimulating the innovation. For example, Siemens (Germany) has set a standard for its divisions, according to which 25 % of the company's products have to be new products, namely products that were not produced five years ago. Awards for innovation have become widespread among engineering companies. At the same time, rewards for innovation are often not only one-time but also the long-term: the premium for the proposed innovation could be paid as long as it brings income to the company (Levchenko, 2007).

Developing a system of monetary encouragement, the employers should take into account the following factors: providing the premium should be based on the personal contribution of each employee; the provided the premium should not be considered by the employee as a part of the salary; the amount of the premium should be economically justified; it is necessary to establish specific indicators for which the premium is paid.

In general, scientists separate the following effective and topical for today tools, based on successful foreign experience:

1) providing the opportunities for professional development, training, the opportunity to study abroad;

2) the improved working conditions (improvement of the workplace, organization of office space, provision of more modern equipment);

3) attractive job title;

4) recording the achievements (private attention from the authorities, publication of information about achievements on the company's website, in print media);

5) implementing the system of compensation by free time, the feature of which is that for effectively performed work the employees receive additional free time for rest instead of cash allowances and premiums;

6) participation in decision-making (a sense of involvement of the employee in decision-making, such as surveys, "voting", etc.) (Klimchuk, 2016)

G. Yu. Goncharov identifies two main problems arising in practice:

1) the employer neglects to apply the encouragements to the employees who deserve them;

2) the employer unreasonable apply the encouragements to the employees who do not deserve them.

It has been repeatedly observed in practice that even when the employee performs work at an impeccable level, the employer does not provide him/her the material and moral benefits he/she deserves, ignoring his/her right to acquire additional spiritual and material values, thereby reducing his/her interest in conscientious work. There are also cases when the encouragements are used without sufficient justification, for example, immediately to many employees or to the employee who has not shown himself/herself in any way. If in the first case the legal rights and interests of the employee to receive the encouragement are violated, in the second case the effectiveness of the institution of encouragement is reduced. To G. Yu. Goncharov's point of view, to reduce the cases of unjustified using or non-applying the encouragements, it is necessary to introduce an effective statutory mechanism that should consolidate the subjective right of the employee to receive the encouragements and establish the grounds for its implementation (Goncharov, 2015).

An important point in the application of the encouragements to the employees is to adhere to certain principles. As the evaluation of work of the employees and the decision to encourage them is subjective, it should be based on certain principles.

The principles of encouragement for achievements at work mean guiding ideas of the encouragement norms, which manifest themselves in the law, have an impact on the law enforcement in regulation of the encouragement relations and encourage behaviour that develops in the course of achieving socially useful results and indicators of the work performed (Dzhepa, 2013).

There is no consensus among scholars on defining the principles of encouragement. However, analysing the scientific views of various authors, we can identify the following most important principles:

1. The principle of legality, which consists, firstly, in the legislative consolidation of the basic provisions on encouragements: types, grounds, procedure for their application; secondly, compliance with the laws of all other legal acts which specify the provisions on encouragements; thirdly, observance by all subjects of labour relations of the provisions of the Constitution, the Labour Code, laws and local legal acts.

2. The principle of equality provides for equal opportunities for all employees to receive encouragements, as well as the prohibition of discrimination against the employees on any grounds.

3. The principle of fairness means application of the encouragements to the employee and its type should correspond to the employee's real work achievements. This principle avoids both situations where the employer does not apply encouragements to the employee who really deserves it, and vice versa, when unreasonable encouragements are applied.

4. The principle of individualization. O. Barabash identifies two aspects of this principle: personalization aimed at taking into account the personal characteristics of the encouraged subject (his/her merits, social status, age, gender, etc.), his/her material and moral needs, interests; and personification – when legal encouragement is characterized by targeting, i.e. it is applied to the specific subject of the deserved deed (Barabash, 2012).

5. The principle of publicity. This principle implies publicity during application of the encouragements by the employer, because the meaning of the encouragement is just the public recognition of the employee's achievements. According to the Labour Code of Ukraine, encouragements are announced in a solemn atmosphere, which is a moral encouragement for both the employee who received it and for the entire staff. The second aspect of this principle is to consolidate the types and grounds for encouragement in local acts of the organization and awareness of the employees about them.

6. The principle of timeliness, which provides that the application of encouragements to the employee will not be postponed for a long time and his/her merits will be assessed in a timely manner. Otherwise, untimely encouragements may not be necessary for the moral satisfaction of the employee and, thus, significantly impair its effectiveness.

7. The principle of mutual interest. On the one hand, encouragements are aimed at encourage the employee to the conscientious work, by obtaining certain material or moral welfare. At the same time, the observance by the employees of the behaviour desired by the employer ensures his/her interests. Thus, by introducing an effective system of encouragements in the organization, in compliance with the legal provisions and fair assessment of the employees, the employer ensures compliance with the interests of both parties of the labour relationship.

CONCLUSIONS

Non-consolidation of the types and grounds to apply the encouragements in the Labour Code of Ukraine is a disadvantage in the legislative regulation of the researched area of relations, as it causes inconsistency in establishing specific types of encouragements and criteria for their application in local regulations.

Thus, consolidation of the basic types, grounds and principles of encouragements to the employees at the legislative level will: a) ensure using more systematic approach to legal regulation of encouragements at the local level by specifying such requirements to each individual enterprise, institution and organization; b) provide the employees with a guarantee to avoid unjustified and illegal disregard for their achievements at work.

Since merit is considered as a ground to apply the encouragements, the concept of labour merit needs to be legally specified. In order to make effective motivation of the employees in the form of encouragements, it should be transparent and timely. To ensure the transparency, it is necessary to determine clearly the criteria of encouragements, their grounds in local regulations of the enterprise. Also the legal basis and conditions of the encouragement

should be formalized, so the employer will not be guided solely by its own wishes. After all, based on the provisions of legislative acts, encouragement of the employee is a right, not an obligation of the employer (Article 144 of the Labour Code). So, it should decide for itself the expediency of applying (or not applying) encouragements to the particular employee. And for timeliness, it is important to encourage employees not only on the days of professional holidays "for good", but every day to see a human of work.

We share the position of those scholars who propose to separate the appropriate chapter in the Labour Code "Encouragements at Work", which will increase the role of encouragements in regulation of the labour relations.

As the employee's needs depend on various objective and subjective factors and they change with the development of social relations, it is necessary to adapt to them and to improve a system of encouragements in accordance with the modern conditions. To move effectively in this direction, it is important to rely on positive foreign experience, as well as, the employers should assess the impact of the encouragements on results of work.

So, it is necessary to improve the legislation, in particular: to consolidate the main types of encouragements (material, moral, organizational) at legislative level; to define the concept of "merit" and to consolidate the main grounds to apply the encouragements to the employee; to foresee the possibility of concretization of these provisions in local regulations; to consolidate the basic principles of application of encouragements.

At the same time, the employers need to create their own effective system of encouragements by approving the relevant local acts, to choose the types of encouragements taking into account the employee's needs and constantly improve them, adapting to the economic and social changes. Only through a combination of state and local regulation a system of encouragements will have the most effective result.

It should be paid more attention to the study of foreign experience in motivation and encouraging a staff of the enterprise.

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THE CONCEPT OF STAFFING COURTS IN UKRAINE

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Abstract. The article is devoted to the formulation of the general definition of government authority and officials whose activities are aimed at staffing the courts, on this basis, proposals are given to improve the current administrative legislation. The research was performed using a systematic approach to staffing activities, taking into account the subject-object relationships that occur in the implementation of relevant activities. The characteristics of the objects of managerial influence as means of clarifying the competence of courts staffing subjects through the disclosure of their activity's tasks. The essence and significance of the relevant connections in the implementation of courts staffing have been studied. Based on the peculiarities of the administrative and legal regulation of the staffing of the judiciary in connection with the characteristics of the subject of public administration, the general and specific features of a subject of courts staffing are identified. The specific features of these entities, due to the peculiarities of the judiciary as a sphere of their activities, include: staffing of courts, as a rule, is not the main direction of their activities (except for the HCJC of Ukraine and the National School of Judges of Ukraine); staffing of the court is carried out mainly by entities that are not included in the staff list of a particular court, and therefore has an external nature to the court (GRP, HCJC of Ukraine, President of Ukraine, SJA of Ukraine, National School of Judges of Ukraine, judicial self-government and others authorized entities); mostly collegial principles of decision-making. The definition of a subject of courts staffing is an authorized body of state power or its official, whose activities are aimed at ensuring the proper professional level of court officials, ensuring the ability of courts to effectively perform their tasks. The expediency of consideration of a subject of courts staffing in the narrow and broad senses is substantiated. It is pointed out that the current wording of item 6.2 of the Regulations on the procedure for election to and dismissal of the chairman, first deputy, deputy chairmen, and chairmen of judicial chambers of the Court of Appeal of 12.10.2001 is inconsistent with the current norms of Part 4 of Art. 20 of the Law of Ukraine "On the Judiciary and the Status of Judges" of 02.06.2016 № 1402-VIII, in connection with which proposals for amendments to the said Law.

Keywords: court, judiciary, staffing, subject of law, authority, professionalism.

INTRODUCTION

The characteristic of subjects of courts staffing involves taking into account the systemic nature of the activities of staffing. The substantive aspect of the system involves the characteristic of its elements, such as purpose, elements, and relationships between them (Kagan, 2006). The administrative nature of the activities related to courts staffing means the presence of managerial influence in its implementation. In such circumstances, it is

necessary to take into account the subject-object relationships that occur in carrying out the relevant activities. The characteristics of the objects of managerial influence will clarify the competence of the subjects of personnel support of the courts, as it will reveal the tasks of their activities. In addition, it is necessary to identify the nature and significance of the relevant links in the implementation of courts staffing, the identify of specific subjects of such activities, and describe of the forms of decisions they make.

Some issues of administrative and legal principles of staffing the functioning of courts have recently received direct coverage in the works of such scientists as: O. M. Lagnyuk, (2014); V. S. Dekalenko, (2017); O. V. Ulyanovskayaa, (2019); A. V. Shevchenko, (2020) and some others. At the same time, the relevant works in such spheres as the activity of public administration authority (Evdokimov, 2020), the activity of local self-government authority (Kirichenko, 2019) are subject to consideration, 2019)) and some others. Some of the results of these works, despite their different sectoral focus, are generic concerning this study.

The object of the study is administrative legal relations that arise in connection with the staffing of the courts. The subject of the research is the concept of a subject of courts staffing. The purpose of the article is to provide the concept of a subject of courts staffing, on this basis to formulate proposals for improving the current administrative legislation.

MATERIALS AND METHODS

The normative-legal acts in the sphere of the judicial system concerning the personnel support of the activity of courts are analyzed, the practice of their application is studied. The research was performed with a combination of general and special legal methods of scientific knowledge, taking into account the general criteria of scientific objectivity. The research strategy was determined with the help of the system method. Using the formal-logical method, the characteristics of a subject of courts staffing are determined. Using the method of synthesis in combination with the formal-logical method, the concept of the subject of personnel support of courts is formulated. With the help of the formal-dogmatic method, proposals for changes to the current administrative legislation have been formulated. With the help of the dialectical method in combination with the system method, the directions of further scientific research are substantiated.

RESULTS AND DISCUSSION

Administrative activities related to courts staffing involve the impact on a significant number of facilities. So, revealing the essence of courts staffing of general jurisdiction as an administrative and legal category, O. M. Lagniuk defines the following goals of such support: staffing of courts with appropriate professional level, which includes their selection, appointment, training, education, dismissal, and other staffing of courts of general jurisdiction (Lagniuk, 2015). Due to the definition of V. S. Dekalenko, who explores the problems of administrative and legal support for the formation of human resources for the courts of Ukraine, the purpose of staffing the courts of Ukraine is to ensure the functioning of courts (Dekalenko, 2017). A. V. Shevchenko, in the context of the study of personnel procedures in personnel work in the judicial system of Ukraine, points to such objects of

management decisions as appointment, certification, the establishment of qualification classes, dismissal (Shevchenko, 2020). O. V. Ulyanovskaya, in the context of the study of administrative and legal principles of the right to judicial protection, identifies the following objects of administrative relations that arise in the implementation of courts staffing: forecasting and planning, recruitment, training, training, career development, and others (Ulyanovskaya, 2019). M. G. Melnyk, researching the category of courts staffing, connects it primarily with ensuring the proper professional level of judges and other court officials (Melnyk, 2011). Summing up, we note that despite the differences in the issues addressed, the only priority is to ensure courts staffing: ensuring the proper professional level of court staff and the ability of courts to perform their functions. This correlates with scientific achievements in other areas of public administration.

That is, P. V. Evdokimov, based on the results of the study of the essence of administrative and legal staffing regulation in public administration, concludes on such priorities of staffing as ensuring the appropriate professional level of staff, ensuring their motivation to work effectively, effective use of their potential, ensuring their professional and social development and protection (Evdokimov, 2020). Thus, the goals of staffing the activities of public authorities are unitary: to ensure the proper professional level of employees and to ensure the ability to perform their functions effectively. To summarize this, a significant number of areas of personnel activities are implemented, which necessitates the further development of the systematization of the subjects of personnel support of the courts according to the criteria of the implemented areas of staffing.

Thus, an integral element of the system of courts staffing is the subject of staffing.

The science of public administration there are distinguished the characteristics of a subject of management as a subsystem that has a managerial nature: is a government authority or other separate organization; acts based on state powers; make management decisions as a way to exercise managerial or regulatory influence on the objects of management (Nagaev, 2018). The administrative legal personality of a subject of administrative law determines the performance of its functions of public administration, coordination of administrative and supervisory powers in the field of public administration. Such functions can be clarified taking into account the characteristics of public service: the activities of officials; these persons hold positions in public authorities; the focus of such activities on the performance of state or local government functions; these persons receive wages exclusively from the state or local budget, respectively (Bityak, 2020).

In the modern doctrine of administrative law, the position of O. L. Sokolenko on the following features of the subject of power as one of the types of subjects of administrative law: the exercise of power management functions and delegated management powers; the specified functions and powers are carried out with strict observance of requirements of legality; the main purpose of their implementation is to fulfill the main tasks of the state and ensure the rule of law (Sokolenko, 2020). The subject of staffing of a public authority is considered in the legal literature based on subject-object interaction of the management and control system. So, P. V. Evdokimov, exploring the essence of the subject of staffing of public administration authority, proceeds from the presence of such a subject defining feature: the presence of competence and power, which through the will of the subject of management

are embodied in statutory forms of management decisions. The scientist identifies other distinctive features of the subject of management: the presence of structurally defined governing authority; purposeful nature of the impact on the object of management; is an element of the management system; the presence of state-authoritative competence; forms of decisions are management teams or other binding decisions; specific direction of leadership (Evdokimov, 2020). V. V. Tereshchuk, examining the characteristics of a subject of public administration, identifies the following features: is a subject of administrative law; the exclusive field of activity is administrative and legal relations; are created in the order provided by the current legislation; is part of a broader system of public administration; availability of managerial, intervening, providing functions, as well as assistance functions; the legal regime of activity is defined by part 2 of Art. 19 of the Constitution of Ukraine; the public goal of activity (Tereshchuk, 2020). V. V. Dokalenko, elaborating on the essence of civil society institutions as objects of government, points to the prospects of the interaction of these institutions with public authorities based on partnership, where the public authority should retain, mainly, control over the legality of civil society institutions. The researcher comes to this conclusion not only based on current provisions on the interaction of civil society institutions and authorities but also models of this interaction: paternalistic, liberal, participatory (Dokalenko, 2020).

Taking into account the results of generalization of the outlined scientific approaches provides an opportunity to form a systematic view of the characteristics of the subject of power in the modern doctrine of administrative law, as well as through comparative research to identify and characterize specific features of personnel in a specific area – the judiciary.

Staffing of public administration authority is carried out on a professional basis (Evdokimov, 2020). At the same time, staffing of courts is usually not the main activity of public authorities in the judiciary. For example, among the tasks of the GRP in the first place is to ensure the independence of the judiciary, and the formation of a virtuous and highly professional corps of judges is determined in one of the last places (Part 1 of Article 1 of the Law of Ukraine "On the High Council of Justice» of 21.12.2016 № 1798-VIII (hereinafter – the Law "On the High Council of Justice") (On the High Council of Justice, 2016)). The exception is the HCJC of Ukraine, the vast majority of whose powers are directly related to the staffing of courts (Part 1 of Article 93 of the Law of Ukraine "On Judiciary and Status of Judges" of 02.06.2016 № 1402-VIII (hereinafter – the Law "On Judiciary and Status judges") (On the Judiciary and the Status of Judges, 2016)). Training of highly qualified personnel for the justice system is defined as the main (but not the only) task of the National School of Judges of Ukraine (Part 1 of Article 104 of the Law "On the Judiciary and the Status of Judges"). Other personnel of the courts, which belong to the judiciary, provide such support, along with other areas of their activities. For example, such are the meeting of judges (Part 5 of Article 128 of the Law "On the Judiciary and the Status of Judges"), the chairman of the local court (Part 1 of Article 24 of this Law), etc. This way of organizing courts staffing is due to the current state of development of the judicial system. However, it is necessary to agree with the provisions set out in the Strategy for the Development of the Justice and Constitutional Judiciary for 2021–2023 regarding functional imperfections of authorized entities in the field of the judiciary, including judicial self-government and judicial governance; excessive complexity

of procedures for filling the position of a judge (competition to fill a vacant position of a judge, the procedure for passing the qualifying exam); insufficient effectiveness of procedures for bringing judges to disciplinary responsibility, etc. (Strategy for the Development of the Justice System and Constitutional Judiciary for 2021–2023, 2021). The above creates a basis for further reform of administrative procedures for staffing the courts.

The most common subject of personnel work in public authorities, enterprises, institutions, organizations are their relevant structural units, in particular the personnel service, which tasks include: the formation of facilities and management structures; calculation of staffing needs, both current and future (Bandurka, 2020). Instead, the subjects of courts staffing are external to the court. Thus, the subjects of court staffing as persons administering justice are the HCJC of Ukraine, the GRP, the President of Ukraine. The subjects of appointment and dismissal of the head of the court staff and his deputy are the relevant officials of the SJA of Ukraine (its territorial offices). The outlined specifics of the organization of courts staffing are well-established, have proven their effectiveness in the practical context, and are not disputed in the documents on reforming the organization of the judiciary, especially in the Strategy for Justice and Constitutional Justice for 2021–2023. At the same time, this specificity actualizes the review of individual scientific achievements.

So, O. V. Ulyanovskaya, characterizing the civil service relations in the field of justice, points to their internal organizational nature as those aimed at implementing the tasks and functions of the state (in particular, the administration of justice) and related to the status of (public) civil servants, including a number of judges. Thus, the scientist proceeds from available scientific developments in the field of administrative law (Ulyanovskaya, 2019). While positively assessing the soundness and logic of the scientific analysis carried out by the scientist, it is necessary to point out the external nature of the activities of courts staffing subjects. Therefore, the internal organizational nature of civil service relations should be stated, first of all, within the judiciary. In the context of a specific subject of public authority, it is important to consider these relations as external.

The collegial nature of decision-making is quite common among courts staffing subjects. This applies, first of all, to the authority of judicial self-government (Shevchenko, 2020), (Yashchenko, 2020). However, following Part 1 of Art. 1, art. 18 of the Law "On the High Council of Justice" GRP is also a collegial authority. The only condition for the GRP's authority is the election (appointment) of at least fifteen members and their swearing-in. Following Part 1 of Art. 92, part 1 of Art. 101 of the Law "On the Judiciary and the Status of Judges" High Qualification Committee of Ukraine is a collegial authority, whose decisions are taken exclusively collegially. The exclusively collegial nature of decision-making by this authority is due to the specifics of the judiciary and the need to ensure the representation of the interests of judges in their work, as rightly pointed out by I. Ye. Marochkin, citing international standards of personnel activities for the service of judges (Moskvich et al., 2013).

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The staffing of the judiciary is carried out exclusively by the subjects provided by law: authorized public authorities or their officials. Their activities are aimed at providing the judiciary with professional staff to ensure that the judiciary fulfills its tasks. In this case, following paragraph 1 of Part 2 of Art. According to the Law on the Judiciary and the Status of Judges, budget funding for the judiciary should ensure full and independent administration of justice following the law.

Taking into account the above features of the administrative and legal regulation of the staffing of the judiciary in conjunction with the characteristics of the subject of public administration allows you to identify general and specific features of the subject of staffing of the courts.

The general characteristics of the subjects of staffing of the courts include: is a authority of state power or an official of such a authority; activities aimed solely at performing state functions; financing of the activities of these entities is carried out exclusively from the state budget.

Specific features of courts staffing subjects reflect the specifics of these entities, due to the peculiarities of the organization of the judiciary as their sphere of activity: staffing of courts, as a rule, is not the main direction of their activities (except High Qualification Committee of Ukraine and National School of Judges); staffing of the court is carried out mainly by entities that are not included in the staff list of a particular court, and therefore has an external nature to the court (GRP, HCJC of Ukraine, President of Ukraine, SJA of Ukraine, National School of Judges of Ukraine, judicial self-government and other authorized entities); mostly collegial principles of decision-making. The study of administrative and legal regulation of powers for appointment to and dismissal from administrative positions draws attention to some of its shortcomings.

Thus, according to the current legislation, the Council of Judges of Ukraine is the subject of resolving the issue of dismissal of judges from administrative positions in the courts of appeal. In particular, following paragraph 6.2 of the Regulations on the procedure for election to and dismissal of the chairman, first deputy, deputy chairmen, and chairmen of judicial chambers of the Court of Appeal of 12.10.2001 (Regulations on the procedure for election and dismissal of the chairman, first Deputy, Deputy Chairmen and Chairmen of the Judicial Chambers of the Court of Appeal, 2001) The Council of Judges of Ukraine considers and decides on the termination of the powers of the Chairperson and his deputies in the Court of Appeal. It is necessary to agree with the position of the GRP, expressed in its Advisory Opinion on Bill № 5778, that the only subject of termination of powers of persons holding administrative positions of the chairman of the court and his deputy may be the meeting of judges of the court. After all, such positions are elective, and the resolution of relevant issues belongs to the competence of these meetings. The only subject of early dismissal from an administrative position is the appointing entity (On providing an advisory opinion on the draft law No. 5778, 2021), (On limiting the influence of judges holding administrative positions, 2021), which is a meeting of judges of the relevant court, not Council of Judges of Ukraine.

The administrative nature of the administrative position involves the implementation of administrative, organizational functions. Despite the provision on the independence of judges in the conduct of their procedural activities, judicial administration is necessary to ensure the effective administration of justice (Dudchenko, 2020). Therefore, the concentration of powers to terminate the powers of persons holding administrative positions in the court in the competence of a public entity other than the appointing entity will create a basis for outside influence on the chairman of the court and his deputy. The need to ensure the unity of the system of guarantees for the activities of persons holding administrative positions follows from the provisions formulated by A. V. Shevchenko, which refers to these persons as civil servants (Shevchenko, 2020).

The disadvantage of this regulation is that it does not correspond to the current version of Part 4 of Art. 20 of the Law "On the Judiciary and the Status of Judges", according to which the initiative group to resolve the issue of dismissal of the chairman of the court and his deputy must include at least one-third of judges. And not two-thirds of judges, as defined in paragraph 6.2 of this Regulation.

CONCLUSIONS

The subject of courts staffing is the authorized body of state power or its official, whose activities are aimed at ensuring the proper professional level of court officials, ensuring the ability of courts to perform their tasks effectively. The subjects of courts staffing should be considered in a narrow and broad sense. In a narrow sense, they are the subjects of court staffing in its administrative and legal context (staffing of courts, appointments, and dismissals). In a broad sense, they are the subjects of all areas of staffing of the courts, including staffing needs, staffing, motivation of employees, support of their service, and others.

To bring the content of paragraph 6.2 of the Regulations on the procedure for election and dismissal of the chairman, first deputy, deputy chairmen, and chairmen of the judicial chambers of the Court of Appeal following competence of judicial self-government (assembly of judges of the Court of Appeal content of Part 4 of Art. 20 of the Law "On the Judiciary and the Status of Judges" should be amended to read as follows: and chairmen of the courts of appeal.

Identifying the nature and importance of relevant links in the implementation of courts staffing, the selection of specific subjects of such activities, describing decisions forms they make is the prospect of further research.

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THE ESSENCE OF INSTITUTIONAL ADMINISTRATIVE AND LEGAL GUARANTEES FOR A JUDGE IMMUNITY

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Abstract. The article is devoted to the definition of the essence of institutional administrative and legal guarantees for a judge immunity, on this basis the definition of promising areas in current administrative and legal legislation development. There is used an approach that administrative and legal guarantees are a specific concept of legal means, methods and conditions which, being applied, allow to ensure a certain state of public relations. Being in their "potential" state also has a protective effect, which can be described as preventive. In the course of the research, institutional administrative and legal guarantees of a judge's inviolability were identified: impossibility to detain or to be kept in detention or arrest a judge without the consent of the High Council of Justice (paragraph 1, part 1, Article 49 of the Law of Ukraine "On Judiciary and Status of Judges"); impossibility to bring a judge to legal responsibility for the adopted decision (paragraph 2, part 1 of Article 49 of the said Law); the impossibility of using a pretext or forcible delivery to a judge, except for the pretext or bringing it to court (Part 3 of Article 49 of this Law); the presence of a special subject of notification of suspicion of committing a criminal offense – only the Prosecutor General of Ukraine or his deputy (Part 4 of Article 49 of this Law); establishment of exhaustive terms of removal of a judge from the administration of justice in connection with criminal prosecution (Part 5 of Article 49 of the said Law); establishment of a special subject of an application for obtaining a court permit to carry out operative-search or investigative actions against a judge – the Prosecutor General of Ukraine or his deputy, the head of the regional prosecutor's office or his deputy (Part 9 of Article 49 of this Law); establishment of special rules of jurisdiction of consideration of cases concerning accusation, application of operative-search or investigative actions, precautionary measures against a judge (part 10 of Article 49 of the said Law); determination of a special subject of liability for damage caused by a court – the state (Part 11 of Article 49 of this Law). It is substantiated that the implementation of institutional guarantees of the immunity of a judge is a necessary condition for the proper implementation of all institutional principles of the judiciary. Regarding some principles, these guarantees are a direct factor in their implementation (including the principles of independence, impartiality, justice, rule of law). It is proved that the institutional administrative and legal guarantees of a judge immunity do not have the features of a legal institution in full sense, and therefore they cannot be characterized as a legal institution. However, they have a certain integrity and specificity, as well as a relationship. The legal relations arising in connection with the implementation of these guarantees are characterized by a certain homogeneity, in particular with regard to their object – ensuring the inviolability of a judge. Therefore, the complex nature of institutional administrative and legal guarantees of judges immunity, of guarantees as a separate legal phenomenon is pointed out.

Keywords: legal guarantees, administrative and legal guarantees, immunity of a judge, judge, judiciary, judicial system.

INTRODUCTION

Achieving the impartiality of a judge is a necessary condition for the implementation of specific features of the judiciary, such as independence, focus (protection of subjective rights, freedoms, legitimate interests through conflict resolution, judicial control and some others) (Nazarov, 2020), and The inviolability of a judge is essentially aimed at achieving impartiality, impartiality and fairness of the court (in the case of the constitutional petition of the Supreme Court of Ukraine on the independence of judges as a component of their status): the decision of the Constitutional Court of Ukraine of 11.03.2010 No. 7/2010). The relationship between the impartiality of the judge and the institutional administrative and legal guarantees of the inviolability of the judge as the goal and means of achieving it suggests that the implementation of these guarantees, both individually and collectively, is a necessary condition for modern judiciary.

The studied concept has not received due attention in the pages of scientific literature, but is widely used and established in administrative law research and is "administrative law guarantees" as a category of generic nature. Thus, one of the first studies in which the author's understanding the essence of administrative and legal guarantees is directly formed is the work of E. O. Olefirenko, dedicated to the development of organizational support for the activities of public authorities in the field of realization of human and civil rights and freedoms. The scientist forms the concept of administrative and legal guarantees based on the content of the category "measures", as well as taking into account the general legal term "guarantee". On this basis, administrative and legal guarantees are defined as the activities of authorized public authorities aimed at ensuring the rights and freedoms of a man and citizen (Olefirenko, 2006). V. V. Mamochka, working on the issues of ensuring the effective functioning of local governments, provides two groups of administrative and legal guarantees: legal (a set of legal acts on the establishment of legal means of local government) and organizational and legal capabilities of local governments to address local issues) (Mammochka, 2010). Similar approaches have been reflected in modern scientific research (Sakun, 2020) (Mahmurova-Dyshlyuk, 2019).

The object of the study is administrative legal relations arising in connection with the implementation of administrative and legal guarantees of the independence of the judiciary. The subject of the study is the essence of institutional administrative and legal guarantees of a judge immunity.

The purpose of the article is to determine the essence of the institutional administrative and legal guarantees of a judge immunity, to determine on this basis the promising areas of development of current administrative and legal legislation.

MATERIALS AND METHODS

The normative-legal acts regulating the relations in the sphere of judicial system and concerning ensuring the inviolability of a judge have been worked out, the practice of their application has been worked out. The work is performed taking into account the general criteria of scientific objectivity, using both general scientific and specifically legal methods of scientific research. The application of the systematic method provided an opportunity to build a research strategy. The application of the formal-logical method allowed to establish the relationship between the key concepts of the study: "institutional administrative and legal guarantees", "legal means" and so on. The application of the synthesis method in combination with the formal-logical method provided an opportunity to determine specific institutional and legal guarantees of a judge immunity.The application of the formal-dogmatic method made it possible to determine the institutional affiliation of these guarantees. The application of the dialectical method in combination with the systematic method made it possible to trace the connection of these guarantees with all the institutional principles of the judiciary.

RESULTS AND DISCUSSION

The place of institutional guarantees of a judge immunity in the current system of organization of the judiciary is revealed through their relationship with the elements of such an organization. The initial criteria are the features of the judiciary, which determine its place along the legislative and executive branches of government, as well as the principles of the judiciary, which determine its specifics. The inviolability of a judge along with the independence of the judiciary is recognized as one of the leading factors in the administrative and legal support of its activities (Ivanishchuk, 2017).

Awareness of the judge of impossibility of bringing him to justice for the court decision, with the exceptions (Part 1 of Article 49 of the Law "On Judiciary and Status of Judges" of 02.06.2016 No. 1402-VIII (hereinafter - the Law "On Judiciary and Status judges ") (On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII," 2016)), contributes to his lack of interest in the case, creates a basis for resolving the case on the basis of fairness, integrity, taking into account the current legal norms, promotes the perception of this decision by society. As a result, it allows to characterize the judiciary as independent in nature. At the same time, the perception of a particular court decision by society is an important factor in the legitimacy of the judiciary, public confidence in it (Organization of Judiciary and Law Enforcement, 2013). In view of the above, the features of the judiciary should not be characterized as a whole, but as a system with close links between its elements. This means that each individual guarantee of a judge immunity is realized not only in any specific feature of the judiciary, but in all of them in general, as well as in the relations between them, i. e. in their system. At the same time, such a feature of the judiciary as its situational nature is revealed, which is revealed in its main purpose: administration of justice (Organization of Judiciary and Law Enforcement Bodies, 2013), (Yarova & Matveevsky, 2020). Guarantees of a judge's inviolability not only contribute to the quality of his or her decisions, but also create confidence in his or her objectivity and legitimacy in society, as it excludes the influence of the opposing party on the judge.

Institutional administrative and legal guarantees of a judge immunity are conditioned by the willful nature of the judiciary, which consists of making a court decision on a specific case, in material form (document). Volitional character is considered as a general feature of the judiciary, i.e. one that is inherent in other branches of government, but in relation to the judiciary is characterized by its own content. Other general features of the judiciary are also expressed in this guarantee: social character, structure of power relations, purposefulness, regulatory and organizational purpose, coercive character, as well as special features of justice (Organization of Judicial and Law Enforcement Bodies, 2013) , (Yarova & Matveevsky, 2020).

The elaboration of scientific positions on the definition of the concept of administrative and legal guarantees indicates a certain dynamics of scientific understanding of this concept. In particular, E.O. Olefirenko (2006) proceeds from the understanding of guarantees as the activity of authorized entities. V. V. Mummochka (2010) defines administrative and legal guarantees as: 1) a set of regulations; 2) capabilities of authorized entities. D. I. Sakun (2019) understands the administrative and legal guarantees of free legal aid by lawyers as a set of conditions, means, and ways to ensure this benefit (Sakun, 2020). Each of these approaches develops the previous one, and more and more accurately reflects the essence of the legal phenomenon of administrative and legal guarantees. However, remarks can be made about each of the outlined approaches.

Thus, in the modern theory of law guarantees of human rights there is determined the system of tools and institutions (both general and special legal) aimed at protecting, protecting and promoting the implementation of these rights (Petrishin, 2020). Thus, E. O. Olefirenko in his definition, does not reflect the static aspect of administrative and legal guarantees, defining them exclusively as an activity. V. V. Mummochka and D. I. Sakun, as a whole, properly reflecting the essence of the category in question, state its systemic nature.

Administrative and legal guarantees are characterized by features that distinguish them from administrative and legal means: a strong connection with the specific legal institution within which they exist; dynamic nature. Manifestations of such connection include: targeting within a particular legal institution; conditionality of legal facts in a particular area. (Sakun, 2020). In addition, guarantees are more complex, systematic than legal remedies.

Institutional material administrative and legal means of ensuring the immunity of a judge (impossibility to detain a judge or detain or arrest him without the consent of the High Council of Justice) (paragraph 1, part 1 of Article 49 of the Law of Ukraine "On Judiciary and Status of Judges"); legal liability for the decision (paragraph 2 of Part 1 of Article 49 of this Law) and others) meet these criteria of legal guarantees. Thus, the impossibility of detaining a judge or holding him in custody or arrest without the consent of the High Council of Justice is ensured by a range of remedies: defined in the Law "On the High Council of Justice" and in the Rules of Procedure of the High Council of Justice. / 52/0 / 15-17 (hereinafter - the Rules of Procedure of the High Council of Justice) ("On approval of the Rules of Procedure of the High Council of Justice: decision of the High Council of Justice of 24.01.2017 No. 52/0 / 15-17," 2017) giving appropriate consent; statutory liability for interfering in the activities of a judge as a subject of justice and for contempt of court, etc. Therefore, this remedy is complex. Both these and other institutional administrative remedies are aimed at

achieving a single goal – to ensure the immunity and, ultimately, impartiality of a judge in the administration of justice. These tools are quite specific in the field of legal relations, as well as – have a dynamic nature, which is manifested in the existence of legal procedures for their implementation.

On October 5, 2021, the GRP made a decision on taking measures to ensure the independence of judges and the authority of justice, according to the judge of the Central City District Court of Kryvyi Rih, Dnipropetrovsk region Kuznetsova R. O. on interference in the activities of a judge in the administration of justice. In particular, the GRP decided to apply to the Office of the Prosecutor General for information on the detection and investigation of a crime in criminal proceedings, entered on August 12, 2021 in the Unified Register of Pre-trial Investigations under No. ____ on the grounds of criminal offense , reported by the judge of the Central City District Court of Kryvyi Rih, Dnipropetrovsk region Kuznetsov Roman Alexandrovich for the administration of justice: the decision of the High Council of Justice of 05.10.2021 No. 2060/0 / 15-21, »2021). On April 9, 2020, the GRP decided to give its consent to the detention of the judge of the Turkiv District Court of the Lviv Region Kryl L. M. under arrest ("On giving consent to the detention of a judge of the Turkiv District Court of the Lviv region Kryl L. M. under arrest: decision of the High Council of Justice of 09.04.2020 No. 911/0 / 15-20," 2020). On June 14, 2018, the GRP decided to satisfy the request of the Deputy Prosecutor General – Head of the Specialized Anti-Corruption Prosecutor's Office Kholodnytsky N. I. on extension of the term of temporary suspension of the judge of Kalanchak district court of Kherson region Zhyvtsova O. A. from the administration of justice in connection with criminal prosecution ("On satisfaction of the request of the Deputy Prosecutor General – Head of the Specialized Anti-Corruption Prosecutor's Office Kholodnytsky N. I. in connection with criminal prosecution: the decision of the High Council of Justice of 14.06.2018 No. 1837/0 / 15-18, »2018).

M. S. Bulkat, based on the results of modern concept of the doctrine of the judiciary, indicates the complex nature of this concept, due to the unity of four aspects of its essence: linguistic, philosophical and legal, intersectoral, theoretical and legal. The first reflects the meaning of the terms "court", "power", "justice", "impartiality". The second combines justice as the basis of the judiciary and equality and legality as concepts that reflect the features of the national legal system that affect the content of justice in it. The cross-sectoral aspect takes into account the connection between the concept of the judiciary and political and social processes. The theoretical and legal aspect determines the specific nature of the concept of judicial power in relation to the category of state power. Theoretical and legal definition of the judiciary: relatively independent, legitimate and universal, legal component of state power, which has an imperative nature and control powers over other components of state power, provides regulation of public relations based on doctrinal provisions on the rule of law and three-element theory of state power in appropriate forms and methods based on its distinctive features. There are three groups of principles of the judiciary: general (interaction of the judiciary with other branches of government and society); organizational; functional. The first group includes: the independence of the judiciary, the exercise of certain entities, the availability of the judiciary, and so on. At the same time, the inviolability of a judge belongs to the third group of principles (Bulkat, 2019). These results correlate with current

developments in the organization of the judiciary, in particular in the context of the signs and principles of the judiciary (Yarova & Matveevsky, 2020).

The implementation of the general principles of the judiciary, on the one hand, depends on ensuring the immunity of the judge, and on the other – contributes to its strengthening. For example, a principle such as the independence of the judiciary could not be implemented without ensuring the impartiality of the judge in considering and deciding the case. On the other hand, the implementation of such principles of judicial independence as: accountability, lack of consent or approval during the decision (Telipko, 2011) and other principles help to create a sense of security in a judge and allow him to be truly impartial in decision-making.

The implementation of institutional guarantees of the immunity of a judge is a guarantee of ensuring the subjective right to a fair trial, the justice of the judiciary. In particular, the impartiality of a judge directly affects the implementation of such components of the right to a fair trial as: independence and impartiality, proper application of procedural law by the court and creating conditions for the exercise of procedural rights of litigants, adversarial and reasonable time and, ultimately, availability of the court. Without ensuring the impartiality of the judge, it is impossible to achieve justice in the natural and legal sense, both in the case and as a result of its consideration.

The immunity of a judge is also closely linked to the implementation of the principle of the exercise of judicial power by certain bodies (and the administration of justice exclusively by the court), as it expresses the additional immunity granted to a judge as a subject of justice.

The availability of the judiciary means, first of all, the availability of justice, which is the compliance of the organization and activities of the judiciary and the court, in particular, the public demand for legally significant cases, as well as meets current international standards. Access to justice includes: access to a court decision (proper motivation for the decision), procedural criteria (maximum simplification of the process in each case, minimum time for consideration of the case (Ovcharenko, 2020). On the other hand, the nature of judicial functions in the system of government bodies and the need to perform them as quickly and efficiently as possible are factors in the existence of a judge's immunity as an element of his legal status.

Being given the purpose of law enforcement defined in the legal literature: implementation of substantive law in a particular case (Petrishin, 2020), we consider it impossible to properly impose law enforcement in the presence of personal interest of the law enforcer, because personal interests may prevail over law . This fully applies to judicial enforcement.

Institutional principles of the judiciary are in close cooperation with functional (e.g., the principle of the state language of justice, the principle of transparency and openness of the judiciary, etc.) and organizational (principle of unity of the judiciary and the status of judges, territoriality, specialization and instance of judicial system, etc.). 2019), (Organization of Judicial and Law Enforcement Bodies, 2013).

The inviolability of a judge is considered to be one of the basic concepts of administrative and legal support of the judiciary in Ukraine. A. A. Ivanyschuk emphasizes the problematic nature of the current state of ensuring a judge immunity, and also suggests considering it as a separate legal institution in the context of administrative and legal support of the

judiciary. Ensuring the inviolability of judges is a priority for the development of such areas of administrative and legal support of the judiciary as: the system of legal relations of public administration, which is formed between the subjects of judicial self-government and judges, citizens; problems of material security of judges immunity; principles of administrative and legal support of the judiciary; administrative and legal status of a judge as a representative of the judiciary; the right of judges to ensure immunity is a component of public subjective law in the field of ensuring the judiciary as the right of judges to require the public administration to take legal action aimed at creating appropriate conditions for the administration of justice; implementation of each specific legal relationship of public administration, which is formed between the subjects of judicial self-government and judges, citizens; issuance of bylaws and individual acts in this area, each of which should contribute to ensuring the immunity of judges; methods of administrative activity to ensure the functioning of the judiciary should help ensure the inviolability of judges, ensuring the inviolability of judges is a separate area of development of such methods (Ivanishchuk, 2017).

The scientific approach of A. A. Ivanishchuk is not contradicted by the position of other researchers on the issue of ensuring the judiciary, both previous and subsequent ones. For example, N. O. Chemodurova, studying the issue of administrative and legal principles of implementation of the principle of independence of judges in the field of administrative justice, points to its special place in the system of principles of law and characterizes it as constitutional, intersectoral, special legal, both organizational and functional. The inviolability of judges is determined by one of the guarantees of the principle of independence of judges (Chemodurova, 2016). A. V. Shevchenko, studying the issue of administrative and legal support of personnel work in the judiciary, an important historical stage of its development indicates the formation of safeguards of political influence on judges (Shevchenko, 2020). Similar approaches are demonstrated by other researchers in the field: S. M. Kichmarenko, A. L. Borko, T. V. Galaidenko and some others.

Correspond to the current provisions of administrative law on the subject and tasks of administrative law regulation conclusions A. A. Ivanishchuk on the purpose of administrative and legal support for the functioning of the judiciary: creating appropriate conditions for judges to ensure subjective rights, freedoms, legitimate interests (Ivanishchuk, 2017). Thus, institutional administrative and legal guarantees of a judge immunity become an integral part of the administrative and legal support for the functioning of the judiciary.

The legal literature expresses the scientific position that the administrative and legal support of the judiciary should be considered as a comprehensive institution of administrative law, given the specifics of: organizational legal relations in the organization of the judiciary compared to other types of administrative relations; the nature of organizational activities in the field of the judiciary – is exclusively by-law but neither legislative no judicial; has not only state-authoritative, but public-authoritarian character; has a single goal – to ensure the subjective right to court; has a specific component – the support activities of the State Judicial Administration of Ukraine (Ivanishchuk, 2017). A similar approach to the essence of the phenomenon of independence of the judiciary is defended by S. M. Kichmarenko, characterizing it as an intersectoral complex legal institution. At the same time, administrative and legal support for the independence of

the judiciary is considered an integral part of this institution (Kichmarenko, 2017). Such scientific approaches are promising, as finding out the institutional integrity of a legal phenomenon is an integral part of its study.

In the theory of law there is a well-established position on the allocation of the following features of the legal institution: a separate subject of regulation – homogeneous social relations; is an integral part of the field of law; integral nature of legal regulation; the presence of specific concepts, constructions, the subject composition of the participants in legal relations, etc. (Theory of State and Law, 2015). These features are complemented by industry doctrinal developments. In that way, R. S. Melnyk, researching the concept of the system of administrative law, rightly notes the conditionality of the content of the legal institution of the surrounding system, its consistency with its key factors. Otherwise, the theoretical construction of the institute will not be able to become the basis for effective legal regulation (Melnyk, 2010). The system of administrative law has a complex structure consisting of general and special parts. In particular, the general part includes such institutions as: administrative and legal regimes, administrative services, civil service, administrative coercion, administrative proceedings and some others. A special part of administrative law is devoted to administrative tort (Petkov, 2016).

The development of any legal entity is impossible without defining its structural elements and the links between them. The definition of each element implies the possibility of distinguishing it from other elements (Shinkaruk, 2002). Therefore, a necessary condition for the development of the institution of administrative and legal support of the judiciary is to determine its internal structure. Institutional administrative and legal guarantees of a judge inviolability are one of the elements of such structure.

Legal relations that arise in connection with the implementation of these guarantees have some signs of homogeneity. That is, all of them have the same object – to ensure the inviolability of the judge. The subjects of these relations are also quite clearly defined in Art. 126 of the Constitution of Ukraine of 28.06.1996 No. 254k / 96-VR ("Constitution of Ukraine: Law of Ukraine of 28.06.1996 No. 254k / 96-VR," 1996) and Art. 49 of the Law "On the Judiciary and the Status of Judges". At the same time, the content of these relations may differ significantly due to the variety of these guarantees.

The guarantees in question are undoubtedly an integral part of administrative law. However, in our opinion, the system of administrative and legal support of the judiciary is a direct tribal system for them, as the specifics of these guarantees are due to the specifics of the judiciary.

The integral nature of the institutional administrative and legal guarantees of a judge immunity is determined by their only focus – ensuring the impartiality of the judge in the administration of justice. All these guarantees are implemented through law enforcement. The only exception is the activities of public organizations as subjects of ensuring the immunity of a judge. However, in this case, too, only the activities of the authorized authorities are initiated.

Institutional administrative and legal guarantees of a judge immunity are characterized by special legal constructions and subjects of implementation: the need to obtain a specific sanction for detention, detention or arrest of a judge – permission; the specific subject

of granting such a sanction is the High Council of Justice (Part 1 of Article 49 of the Law "On the Judiciary and the Status of Judges"); immediate release of a judge who has been detained on suspicion of committing an act for which criminal or administrative liability is provided (Part 2 of Article 49 of the said Law); prohibition of the use of a pretext or compulsory delivery against a judge (Part 3 of Article 49 of the said Law) and others.

CONCLUSIONS

Regarding administrative and legal guarantees, the initial concepts are legal means, methods and conditions which, being applied, allow to ensure a certain state of public relations. Being in their "potential" state also has a protective effect, which can be described as preventive.

The following institutional administrative and legal guarantees of a judge immunity should be highlighted: impossibility of detaining or keeping in detention a judge without the consent of the High Council of Justice (paragraph 1, part 1, Article 49 of the Law of Ukraine "On Judiciary and Status of Judges"); impossibility to bring a judge to legal responsibility for the adopted decision (paragraph 2, part 1 of Article 49 of the said Law); the impossibility of using a pretext or forcible delivery to a judge, except for the pretext or bringing it to court (Part 3 of Article 49 of this Law); the presence of a special subject of notification of suspicion of committing a criminal offense – only the Prosecutor General of Ukraine or his deputy (Part 4 of Article 49 of this Law); establishment of exhaustive terms of removal of a judge from the administration of justice in connection with criminal prosecution (Part 5 of Article 49 of the said Law); establishment of a special subject of an application for obtaining a court permit to carry out operative-search or investigative actions against a judge – the Prosecutor General of Ukraine or his deputy, the head of the regional prosecutor's office or his deputy (Part 9 of Article 49 of this Law); establishment of special rules of jurisdiction of consideration of cases concerning accusation, application of operative-search or investigative actions, precautionary measures against a judge (part 10 of Article 49 of the said Law); determination of a special subject of liability for damage caused by a court – the state (Part 11 of Article 49 of this Law).

The implementation of institutional guarantees of the immunity of a judge is a necessary condition for the proper implementation of all institutional principles of the judiciary. Regarding some principles, these guarantees are a direct factor in their implementation (including the principles of independence, impartiality, justice, rule of law).

Institutional administrative and legal guarantees of the immunity of a judge do not have the features of a legal institution in full, and therefore they cannot be characterized as a legal institution. However, they have a certain integrity and specificity, as well as a relationship. The legal relations arising in connection with the implementation of these guarantees are characterized by a certain homogeneity, in particular with regard to their object – ensuring the inviolability of a judge. Therefore, it is necessary to state the complex nature of these guarantees as a separate legal phenomenon.

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MODERN CHALLENGES OF THE LAW ENFORCEMENT SYSTEM DEVELOPMENT IN UKRAINE AND ORGANIZATION OF ITS FUNCTIONING

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Abstract. The article is devoted to the scientific study of the problem of finding ways to form a modern theoretical and legal model of administrative and legal principles of law enforcement in Ukraine with the selection of the most significant, under the current conditions of law enforcement and the current political and legal environment. The system of law enforcement agencies in Ukraine is considered as a functional integrity of law enforcement agencies and the links between them. This system is considered in structural and functional sections, which are closely related. The structural breakdown of the law enforcement system in Ukraine reflects its elements and the links between them. The functional section of the law enforcement system in Ukraine reflects the activities of the relevant bodies, as well as determines their place in the system of national security agencies as a system of the highest order. In particular, law enforcement agencies are classified as security and defense. The current challenges of the law enforcement system development in Ukraine and the organization of its functioning are: its complexity due to the large number of subjects of law enforcement functions; problems of interaction between the subjects of law enforcement and between these entities and other entities that are not covered by the system under study. Perspective directions of law enforcement bodies system development in Ukraine are determined by: 1) unification of the legal status regulations of law enforcement subjects activity in accordance with the direction of law enforcement activity carried out by them; 2) development of scientific research on law enforcement individual subjects; 3) development of interaction between specific subjects of law enforcement; 4) determining the optimal ratio of unification and differentiation of administrative and legal regulation of organization and activities of the law enforcement system in Ukraine.

Keywords: law enforcement agencies, law enforcement activities, justice, unification, differentiation, system.

INTRODUCTION

2018 № 2469-VII (hereinafter – the Law «On National Security») (on national security: Law of Ukraine of 21.06.2018 № 2469-VII, «2018) establishes the foundations and principles of national security and defense, goals and basic principles state policies that will guarantee society and every citizen protection from threats, based on which the activities of law enforcement agencies should be organized, formed and improved system of measures and means of law enforcement activities. In the context of implementation of the provisions of

this Law and in order to form and determine the priorities of national interests of Ukraine and national security in 2020, the National Security Strategy of Ukraine was adopted (approved by Presidential Decree of 14 September 2020 № 392/2020) and Defense of Ukraine of September 14, 2020 «On the National Security Strategy of Ukraine: Decree of the President of Ukraine of 14.09.2020 № 392/2020, «2020), which highlights the protection of the individual, society and the state from crime, in particular corruption, ensuring the restoration of violated rights, compensation for damage.» (President of Ukraine, 2020)

These regulations are strategically important for the development and functioning of the national security system directly related to the activities of the law enforcement system, the reorganization of which is actively positioned, and steps in this direction should have systemic character and be carried out with minimal strategic, tactical and operational errors, public sensitivity to their presence and direct influence on the rights and freedoms of citizens, the realization of their legitimate interests.

Thus, it is urgent to find optimal scientific approaches to the formation of theoretical and legal model of administrative and legal foundations of law enforcement agencies, taking into account the regulatory potential of administrative law science and features of stabilizing nature of administrative law regulatory impact on processes related to turbulent organizational change in national security and defense sector. Administrative activities of law enforcement agencies are aimed at ensuring public safety and order, which are known to be part of national security, and therefore the effectiveness of its implementation is a guarantee of a safe environment in the state and proper protection of rights, freedoms and legitimate interests of citizens.

In researches and publications, scientists pay attention to the problems of law enforcement, study aspects of administrative activities of individual law enforcement agencies, bypassing the search for the essence of law enforcement on administrative and legal grounds as a general and ascending problem for all other studies. Generalization of scientific developments allows to allocate the works devoted to human rights, information, control and supervision and international activity of law enforcement agencies. Author's view on the essence of law enforcement is presented by A.P. Gel, V.V. Kovalska, R.Ya. Tea and others. Much of the research is devoted to the analysis of the essence of administrative activity (identified 136 dissertation studies prepared during 2000–2021).

The object of the study is public relations regarding the activities of law enforcement agencies. The subject of the research is the current challenges of the law enforcement development system in Ukraine and the organization of its functioning. The aim of the article is to study scientifically the problem of finding ways to form a modern theoretical and legal model of administrative and legal principles of law enforcement in Ukraine with the selection of the most important, under the current conditions of law enforcement and the existing political and legal environment.

MATERIALS AND METHODS

There were worked through acts of normative and legal nature, which regulate relations in the field of law enforcement activities and relate to the definition of the system of law enforcement bodies of Ukraine, the practice of their application was worked through.

The work took into account the general criteria of scientific objectivity, used both general scientific and special legal methods of scientific knowledge. The research strategy is determined by the system method. Using the formal-logical method allowed to determine the relationship between the main categories and concepts of the study: «law enforcement», «law enforcement activity», «national security» and so on. Using the formal-dogmatic method, the place of the system of law enforcement agencies of Ukraine in the system of national security subjects is determined. With the help of synthesis method in conjunction with the formal-logical method, specific challenges to the development of the law enforcement system in Ukraine, as well as its organization and functioning have been identified. With the help of the dialectical method in connection with the formal-logical method the challenging directions of law enforcement bodies system development in Ukraine are determined.

RESULTS AND DISCUSSION

The systemic nature of the scientific task to be solved in the study is manifested in the selection of such problem aspects of administrative and legal foundations of law enforcement agencies as common law, administrative law, public administration. The conditions for this are: systematization of legal research, the subject of which is to find ways to solve the problem of determining the nature and content of law enforcement administrative and legal principles and highlight the most established scientific views on the nature of administrative and legal activities of law enforcement agencies; formulation of features and disclosure of the essence and content in relations of law enforcement activities field as a subject of administrative and legal regulation; identification of modern challenges to the development of the law enforcement system in Ukraine and the organization of its functioning; taking into account the administrative and legal principles of law enforcement agencies; substantiation of provisions on the characteristics of the relationship between the forms and functions of administrative and legal activities of law enforcement agencies; disclosure of general trends in the transformation of methods of administrative and legal activities of law enforcement agencies; substantiation of the ways of implementation in the legislation of Ukraine of the best world practices on system of law enforcement bodies functioning on administrative and legal bases; disclosure of topical issues of ensuring the effectiveness of administrative and legal regulation of law enforcement agencies in Ukraine and identifying proposals for their solution.

The concept of law enforcement is often used as a starting point for defining a law enforcement agency. However, the concept of law enforcement, in turn, is also interpreted ambiguously. Thus, according to the narrow understanding, law enforcement activity is the activity of the competent state bodies in the field of combating crimes and offenses, which is carried out within specially defined rules and procedures and provides for the possibility of state coercion. Accordingly, the system of law enforcement agencies includes only those bodies for which law enforcement is the main and which in accordance with the tasks assigned to them have special jurisdictional and organizational means. In some cases, law enforcement agencies include only those that fight crime and delinquency, the results of which are legal liability under criminal procedure and administrative law. There is also an opinion that law

enforcement agencies should include only those bodies which employees are engaged in professional activities aimed at performing special tasks. Instead, within the broad sense law enforcement bodies are all state bodies, local governments and self-organizations of the population that carry out law enforcement activities, in one way or another implement or promote the implementation of law enforcement functions. As V. Tatsiy rightly points out, as a result of a broad interpretation of the law enforcement function, the system of law enforcement agencies should include almost all bodies that perform law enforcement functions in one way or another, i.e. indirectly engage in law enforcement activities (Voluyko & Druchek, 2020; Shai, 2014; Tatsiy, 2012a).

In our opinion, the position that law enforcement agencies are the activity of all state bodies and non-governmental organizations to ensure respect for the rights and freedoms of citizens, their implementation, ensuring law and order; in the narrow sense, it is the activity of specially authorized bodies in order to protect the rights and freedoms of citizens, law and order and ensure legality, which is implemented in the form prescribed by law and within the powers granted to these bodies (Voluyko & Druchek, 2020).

The Law of Ukraine «On National Security» clearly defines an expanded interpretation of the concept and system of law enforcement agencies as such, which the law entrusts with law enforcement functions and law enforcement activities, which, in turn, is to guarantee state security, protection of Ukraine's border, protection and defense of the state national interests, public order, human and civil rights and freedoms. As for the concept of the law enforcement system, as can be seen from the text of the Law, it more clearly highlights its outlines, but generally defines only some elements of the legal status of the latter, including their tasks and competence. It is noteworthy that along with the concept of «law enforcement agencies» the Law contains such concepts as «state bodies of special purpose with law enforcement functions», «law enforcement bodies of special purpose», «military formations with law enforcement functions», which obviously, due to the variety of tasks assigned to this type of body, and the legislator's efforts to more accurately determine their competence. In view of the above, we express the opinion that one of the urgent tasks of legal science should be the creation of theoretical and legal foundations of law enforcement agencies of Ukraine in the light of the concept of national security (Voluyko & Druchek, 2020).

Thus, the basis of the system of law enforcement agencies should be the results of elaboration of theoretical and legal principles of this system interaction with higher level systems, including the system of national security actors, as well as with other systems: expert institutions; public institutions endowed with powers related to the implementation of law enforcement, etc. (Sitchenko, 2019; Naumenko, 2019). So, L. O. Sitchenko, revealing the administrative and legal principles of interaction between law enforcement agencies and public institutions, notes that the interaction of law enforcement agencies with public institutions is seen as a process of business cooperation of institutions entrusted with law enforcement tasks and functions with public institutions(both state and non-governmental) of various directions, based on the established grounds (principles) of joint activities, legislation, administrative agreements, memoranda of cooperation in certain forms, within a certain mechanism to achieve law enforcement objectives of the subjects of interaction. Administrative and legal support for the organization of interaction is associated with a

system of legal acts formed by specially authorized entities necessary for the establishment, implementation, implementation of relevant joint activities, and as a result – achieving the objectives and goals of interaction, through which participants in joint processes activities are endowed with the relevant rights and responsibilities necessary to delimit their competence and authority on issues of interaction (Sitchenko, 2019). S. M. Naumenko, based on the results of administrative and legal principles study of expert institutions interaction with law enforcement agencies, provides a definition of such interaction and formulates the tasks of expert institutions as subjects of such interaction. Interaction of expert institutions with law enforcement agencies is defined as joint activities based on the law, agreed on the goals, objectives, time, place and other conditions of their activities aimed at fulfilling tasks in criminal proceedings and other cases of application of special knowledge. Tasks of expert institutions, including as subjects of interaction with law enforcement agencies, are systematized through their division into three groups: 1) tasks of conducting research and providing an opinion, which include: conducting research on behalf of and materials of the relevant law enforcement agency; conducting an assessment of property and property rights in accordance with the law, including damages; 2) tasks as a participant in criminal proceedings, namely: technical and forensic support of the scene, other investigative actions and operational and investigative measures; identification and collection of evidence necessary for expert research and criminal proceedings; identification with the help of forensic records of persons involved in the commission of a crime or offense; providing, within the competence, consultations on the issues of technical and forensic support of criminal proceedings; 3) tasks on information and technical support of criminalistic activity: keeping records of instruments of criminal offenses and other objects obtained or seized during criminal proceedings; ensuring the functioning of information retrieval systems and accounting, providing access to them. (Naumenko, 2019).

Forms of police activity in the field of ensuring the rights and freedoms of a child can be considered as a system of homogeneous actions that have external expression and aimed at implementing the tasks and powers of the National Police of Ukraine to create optimal conditions for ensuring and free exercise of human rights and freedoms and the freedoms of a child in particular. There are such forms of activity of the National Police of Ukraine in the field of protection of the rights and freedoms of a child, as: organizational, law enforcement, educational, law enforcement (Mogilevska, 2020).

On the issue of systematization of law enforcement agencies – you can specify the scientific approach, which criterion is chosen direction of their activities: law enforcement; control (exercise of jurisdictional powers in the system of executive bodies); protection of the Constitution of Ukraine and exercise of state control (Tatsiy, 2012b, Popivnyak, 2020).

Today, state control bodies have the function of detecting offenses, after which the relevant materials are passed to law enforcement agencies. In this regard, the affiliation of a significant number of state control bodies to law enforcement agencies is not unambiguous, and their activities should be characterized as search and control. The search nature is inherent in the activities of the relevant subjects of anti-corruption, as well as – defined by law enforcement bodies subdivisions. This conclusion is consistent with the results of current research on the legal nature of law enforcement. In particular, S.S. Shoptenko, according to the study of the

essence of administrative and jurisdictional activities of law enforcement agencies points to such a feature as the possibility of applying measures of state coercion as a result of its implementation (Shoptenko, 2018). Thus, the issue of classification of control and search bodies can be considered as requiring in-depth substantive analysis.

The reference to statistical reporting data, which reflect the results of the activities of certain law enforcement agencies, in particular – the National Police, indicates the need to systematize the directions and forms of its work. So, it is quite difficult to identify the criteria for structural construction of the National Police of Ukraine Report on the results of work in 2020. In particular, there are such areas as: organization of a single security space, general optimization of work, child safety, effective response to domestic violence, etc. The National Police of Ukraine Report on the results of work in 2020 (Report of the National Police of Ukraine …, 2020). It has several functions: protection of law and order, control, protection of the Constitution of Ukraine, etc. This negatively affects the transparency of the National Police of Ukraine, which is one of the established international standards of public administration (European Governance Standards, 2011).

A separate area of improving the system of law enforcement agencies of Ukraine can be considered as the development of legislative techniques for normative consolidation of its operation principles. Thus, the structural and substantive regulation in this area is complex – there are a significant number of laws and regulations: «On the Prosecutor's Office» (on the Prosecutor's Office: Law of Ukraine of 14.10.2014 № 1697-VII, «2014), «On the National Police» (On the National Police: Law of Ukraine of 02.07.2015 № 580-VIII, "2015), «On the Security Service of Ukraine» (On the Security Service of Ukraine: Law of Ukraine of 25.03.1992 № 2229-XII, «1992) etc. This approach of the legislator to the settlement of each law enforcement agency status complicates the availability of relevant norms elaboration, there is a question of ensuring transparency of power relevant subjects (Verkhovna Rada of Ukraine, 2015).

The above scientific approaches to the law enforcement agencies and their forms of activity systematization indicate the theoretical possibility of identifying the general principles of their activities, which should be enshrined in relevant legislation, each of which should be devoted to the principles of a particular group of law enforcement agencies (Nagorna, 2018).

That is, further elaboration of the development of law enforcement in Ukraine involves the implementation of such tasks as: monitoring of general theoretical and sectoral legal research, the subject of which is to find ways to solve the problem of determining the nature and content of administrative and legal principles of law enforcement; development of features and legal characteristics of relations in the field of law enforcement as a subject of administrative and legal regulation; monitoring the challenges of the development of the law enforcement system in Ukraine and the organization of its functioning; development of administrative and legal principles of law enforcement agencies; development of the characteristics of the relationship between the forms and functions of administrative and legal activities of law enforcement agencies; improving the methods of administrative and legal activities of law enforcement agencies; implementation in the legislation of Ukraine of the best world practices of law enforcement bodies system functioning on administrative and legal bases; further consideration of general issues of administrative and legal regulation of

law enforcement agencies effectiveness ensuring in Ukraine and formulating proposals for their solution (Petrov, 2014).

The implementation of these tasks involves taking into account not only the general administrative and legal principles of law enforcement in Ukraine, but also – the peculiarities of their work in certain areas of public relations. As the result, L. Mohylevska, revealing the organizational form of the National Police of Ukraine in the field of ensuring the rights and freedoms of children, highlights its purpose: creating conditions to ensure the implementation of law enforcement acts regulating police activities in the field of personal rights and freedoms. All this is done to establish a relationship between the various bodies of the state, which helps these bodies to share positive experiences, develop the most effective measures for the realization of human and civil rights and freedoms, allows officials to monitor compliance with legal norms guaranteeing human rights and freedoms. and the citizen, allows to influence the behavior of the citizens themselves in the process of exercising their rights and freedoms, and in case of violations to use effective means of influence and, finally, to eliminate shortcomings or gaps in this area. This form is manifested in several aspects. First, this work is internal – meetings, training, retraining and advanced training, inspections, individual educational work, etc.; secondly, work with the public – reports, speeches to the public, thematic lectures, speeches in the media, etc. Another form of organizational nature is work with statements and messages of individuals, analytical materials for monitoring the state of human rights and freedoms. The organizational form aims to promote the creation of effective conditions under which police officers exercise their powers, including activity in order to protect the rights and freedoms of a child. This is achieved by creating conditions for the functioning of the National Police both externally and internally. Implementation of this involves appropriate financial and technical support of units, organization of special training in case of operations and tactical measures, as well as solving problems in creating conditions for citizens to exercise their rights and freedoms, provide them with certain information, issue relevant decisions and administrative acts. For example, it could be an organization of interaction of the National Police with other territorial and line units, children services, administrations of educational institutions for the prevention of juvenile delinquency or organizational measures to search for juveniles who left home and did not return, and the issuance of passports to minors a person from the moment of reaching the age of 14, detention and return home of a minor who is begging and wandering – all this creates conditions for them to exercise their rights and freedoms, etc. (Mogilevska, 2020).

The next form is law enforcement, which is associated with the creation of the necessary conditions to ensure rights and freedoms through the issuance of law enforcement acts, which is part of legal facts system, which is the organizational and legal mechanism for constitutional rights and freedoms. The main purpose of such acts is to specify the content of rights and freedoms, to establish the order, limits and grounds for their implementation and individualization of other legal facts related to the exercise of rights and freedoms. Thus, the National Police of Ukraine issues departmental regulations that allow the relevant units to perform functions to ensure the rights and freedoms of the minors. This is realized through the application of legal norms with the adoption of government decisions to exercise rights

and freedoms. So, in the system of guarantees of human rights and freedoms, law enforcement is subject to the task of protection of rights, i.e. the cessation, detection and investigation of crimes and administrative offenses. The third form is educational, which helps to create all the necessary conditions for raising the level of legal awareness of each individual citizen and the National Police in the context of protection of the rights and freedoms of a child. Educational work in the police is, first of all, purposeful activity of heads of all levels, public institutes on formation of high civic, moral and professional qualities in personnel, mobilization for successful performance of operational and service tasks, strengthening of legality and strengthening of official discipline. In the context of the rule of law, educational work carried out by the police has become particularly relevant. And the last form of the National Police of Ukraine activity is law enforcement. It is aimed at protecting the most important social relations governed by the rule of law from any encroachment. This form is directly related to ensuring the rights and freedoms of citizens, as well as creating the most favorable conditions for their implementation. It should be noted that not all police activities are considered to be law enforcement, but only those that are determined by actions aimed at stopping illegal behavior (Mogilevska, 2020).

Due to that, the immanent problem of administrative and legal regulation of the law enforcement system is the ratio of its unification and differentiation. Unification is associated with the systematization of the general principles of law enforcement in accordance with specific areas of their activities, and differentiation involves taking into account the specifics of a particular area of public relations as a matter of law enforcement agencies jurisdiction (Verkhovna Rada of Ukraine, 1992). Thus, the Draft Law on Child-Friendly Justice was submitted to the Verkhovna Rada of Ukraine (registered on June 4, 2021 at № 5617). The project is designed to strengthen the protection of rights and create conditions for the re-socialization of juveniles who have committed criminal offenses. To achieve this goal, it is considered necessary: to create conditions to ensure the legality, validity and effectiveness of any decision on a child in conflict with the law, as well as to protect the rights of child victims and child witnesses; bring justice for children as close as possible to international standards; to strengthen the positive elements of the existing system of bodies and services for children and to reform its inefficient or incapable components; provide children with access to justice by exemption from court fees. However, as indicated in the conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine dated 01.12.2021, the submitted bill is characterized by the absence of an independent subject of legal regulation. The preamble of the draft states that «this Law aims to create conditions for the organization and effective operation of child-friendly justice, and is the basis for prevention of delinquency in children, proper treatment of children in contact with the law and its social rehabilitation, prevention of secondary victimization of a child who is a victim or witness». Instead, based on the content of the norms proposed in the draft, most of them are already provided by other regulations. In addition, it indicates duplication of the provisions of certain acts with force of general provisions, in particular – the Law of Ukraine «On Mediation», adopted by the Verkhovna Rada of Ukraine on 16.11.2021 (Draft Law on Justice, Child-Friendly: Draft Law Of Ukraine dated 04.06.2021 № 5617, «2021) (Cabinet of Ministers of Ukraine, 2021). This indicates that in the further systematization of law

enforcement agencies of Ukraine it is necessary to take into account norms of general nature (which actualizes the unification of legislation on the law enforcement system) and special rules, including those due to the specifics of a particular area of legal relations (Verkhovna Rada of Ukraine, 2021).

CONCLUSIONS

The system of law enforcement agencies in Ukraine should be considered as a functional integrity of law enforcement agencies and the links between them. This system should be considered in structural and functional sections, which are closely related.

The structural breakdown of the law enforcement system in Ukraine reflects its elements and the links between them. The primary element is a specific law enforcement agency. It is expedient to classify law enforcement agencies according to the direction of their activity: protection of law and order; protection of the Constitution of Ukraine; control and search activities (taking into account the competence of jurisdictional nature in the exercise of relevant powers). The links between these bodies can be both vertical and horizontal.

The functional section of the law enforcement system in Ukraine reflects the activities of the relevant bodies, as well as determines their place in the system of national security agencies as a system of the highest order. In particular, law enforcement agencies are part of the security and defense forces sector.

Current challenges for the development of the law enforcement system in Ukraine and the organization of its functioning are: its complexity given the large number of law enforcement functions subjects; problems of interaction between the subjects of law enforcement and between these entities and other entities that are not covered by the system under study.

Perspective directions of the system of law enforcement bodies development in Ukraine are: 1) unification of legal regulation of law enforcement entities legal status in accordance with the direction of law enforcement activities carried out by them; 2) development of scientific research on individual subjects of law enforcement; 3) development of interaction between specific subjects of law enforcement; 4) determining the optimal ratio of unification and differentiation of administrative and legal regulation of the organization and activities of the law enforcement system in Ukraine.

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BEST PRACTICES IN THE PREVENTION OF RECIDIVISM – CURRENT STATE AND FOREIGN EXPERIENCE

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Abstract. The article is highlighting best practices in the prevention of recidivism and international standards in this area. Current international standards for the treatment of convicts include, inter alia, provisions relating to interference with prison activities, including education, training and other programs, as well as the need to ensure contact with the outside world; early release of convicts; providing assistance and support to convicts after release; community involvement in the reintegration process; and standards that encourage the use of NGO programs as an alternative to imprisonment. International standards provide for the formation of strategies for the reintegration of offenders, which should include, inter alia: analysis of the problems that the offender will face after release from prison and ways to solve them; mobilization of available resources and cooperation of various bodies to solve the problems of persons released from prisons; special attention is paid to the needs of women released from prisons, criminals living in rural areas or belonging to national minorities, etc. The issues related to the practical implementation of probation legislation in Ukraine are analysed and it is concluded that there is no existing regulation. The author emphasizes that at this stage it is impossible to talk about a comprehensive approach of the state to the prevention of recidivism due to the existence of effective national programs to prevent it, which are reflected in relevant programs and, in turn, in individual plans to combat new crimes for specific criminal offenders. Also, the probation programs currently available in Ukraine are essentially training courses that contribute to the acquisition of a specific skill, but are not sufficient for comprehensive changes in the life of a person at high risk of recidivism. Without diminishing the role of controlling the behaviour of a person who has already committed a criminal offense, more attention should be paid to feedback from criminal offenders and helping them to resolve issues related to employment, housing and social networking. Thus, there is a need to implement scientifically and normatively approved national programs developed in accordance with foreign experience and international standards by the best scientists with the active participation of the public.

Keywords: probation, recidivism, reintegration of prisoners, international standards, release from punishment and serving it, prevention of criminal offenses.

INTRODUCTION

It is now well known that no crime prevention strategy can be effective without a focus on recidivism. After all, criminal offenses committed by people who have already been subjected to criminal law enforcement measures, and who have proved to be ineffective,

are particularly socially dangerous. Their presence characterizes systemic problems in the application of criminal law, but at the same time encourages scientists to seek new strategies to address such issues. The achievements of related sciences on this issue are widely used.

Today, researchers have identified that one of the main reasons for repeated criminal offenses is the inability to effectively integrate offenders into society without appropriate state assistance. Of course, this provision does not release criminal offenders from personal responsibility for their actions. This only leads to the conclusion that taking measures to ensure the effective reintegration of convicts into society is probably one of the best and most effective ways to prevent the recurrence of criminal offenses.

The aim of the article is to conduct a detailed analysis of best practices in relapse prevention, proposed by researchers from different countries, and on their basis to develop practical recommendations that will be relevant for Ukraine in modern conditions.

MATERIALS AND METHODS

Research methods are selected based on its object and subject. In general, general scientific (analysis and synthesis, methods of empirical research) and special methods (systemic and structural-functional) are used.

The work uses a set of such general and special scientific methods of cognition. Dialectical method – for criminological characterization of recidivism through the prism of general patterns of crime. Method of system-structural analysis – in the course of criminological characteristics of the current state of recidivism in Ukraine. Modelling method – for the development of models of special criminological measures to prevent recidivism. The method of deduction – to build special criminological means of preventing recidivism.

RESULTS AND DISCUSSION

International standards and norms reaffirm that the social rehabilitation of convicts and their successful reintegration into society is one of the main goals of the country's criminal law policy. A set of such measures is needed both to support the reintegration of offenders and to prevent further crime and protect society. Ensuring the effective reintegration of convicts into society is perhaps one of the most cost-effective ways to prevent recidivism. The main purpose of rehabilitation programs for convicts is to help offenders overcome the stigma of a criminal record, the disastrous consequences of imprisonment, and the many obstacles they face in trying to reintegrate into society.

Currently, the largest review of various scientific and practical concepts in the development of reintegration programs for perpetrators of criminal offenses is the Introductory Guide to Recidivism Prevention and Social Reintegration of Offenders (UNITED NATIONS, 2012), developed by the Vienna United Nations Office on Drugs and Crime.

As noted in this guide, the development of government relapse prevention programs contributes to public safety. Such issues should be part of any comprehensive crime prevention strategy and meet international standards. At the same time, effective crime prevention strategies are needed at both the local and national levels, focusing on the social integration of offenders and the reintegration of ex-prisoners into society. Ultimately, the

time when criminals are tightly controlled can be used to stabilize and rehabilitate them, but these achievements are often short-lived without supporting the reintegration of prisoners into programs designed to help them return to life as law-abiding citizens.

Current international standards for the treatment of convicts include, inter alia, provisions relating to interference with prison activities, including education, training and other programs, as well as the need to maintain contact with the outside world; early release of convicts; providing assistance and support to convicts after release; community involvement in the reintegration process; as well as standards that encourage the use of programs of public organizations as an alternative to imprisonment (UNITED NATIONS, 2012).

Stephen Farrall (Stephen, 2002) points out that changes in family and work circumstances were key factors in determining probation for those who had served their sentences. That is, drug and alcohol use, lack of proper work and stable positive relationships with others were associated with a high risk of relapse. At the same time, good motivation, employment, relationships and other positive social and economic factors have been associated with a reduced risk of relapse.

Gemma Harper and Chloe Chitty (Harper & Chitty, 2004) point out that, although in practice it is difficult to distinguish between different factors in a person's life - for example, to assess the impact of the offender's own motivation and the effect of the probation program, the effectiveness of probation programs ultimately depends on the effectiveness of identifying real needs.

Yvonne Dandurand (Dandurand, 2008) indicates the presence of a number of problems with parole. First of all, this is a question of not very justified increase in the number of people who were released on parole. In addition, the researcher determines the complexity and subjectivity of the decision-making process for such a release. Some issues include proper oversight of public authorities' compliance with the conditions of such release and the development of algorithms for such inspections.

Chen and Adams (Chen & Adams, 2017) also point to the importance of early removal of convictions as a measure of encouragement. And although both men and women seek early retirement, women are more motivated by moral and religious influence and reputation concerns. Women are also more likely than men to acknowledge personal shortcomings and want to be law-abiding. Early withdrawal of women's beliefs is combined with their willingness to change, as well as personal and professional goals.

Willis and Moore (Willis & Moore, 2008) studied the problem of recidivism among Indigenous peoples in Australia. Researchers focused on evaluating the implementation of correctional programs, participating in programs, and analysing barriers to participation and improving programs. Effective reintegration of prisoners requires both proper policy formulation and research to change correctional programs. Appropriate implementation and supplementation of the program, evaluation of the program and involvement of families and communities in reintegration are also issues for further research.

Telefanko (Telefanko, 2019) studied the problem of recidivism in Ukrainian context. According to him, it is crucial for society to be aware of the causes and consequences of recidivism. Of course, it did not receive any distorted information, because where there is a

vacuum of official information, it is filled with other sources. A person can only be persuaded by what has happened to him personally, that is, first of all, a person who has been a victim of a crime. It is important for society to be aware of this need – to be supportive for such citizens. And the harsh judgments of the courts should be the tools to accomplish this. The recurrence of crimes reflects a sign of heredity of antisocial behavior, not simply a fact of secondary violation of the law. The nature of recidivism is a concern for every society. And everyone in their own way is looking for options to warn her. Therefore, preventing this type of crime is one of the most important tasks of Ukraine's criminal justice policy. This is due to the fact that recidivism is one of the most dangerous types of criminal manifestations, a specific unit in the overall structure of all crime, which has its own laws and cannot be eradicated in the near future. The maximum possible to combat it is to reduce it to a certain size, to maintain it at a controlled level, to exercise effective control by society of its condition and measures to combat it.

Luhina (Luhina et al., 2020) considers one of the topical issues of criminology in the classification of the history of recidivism on the classification of the history of recidivism both in general and in Ukraine. The criminological concept of "recidivism" is related to the criminal law concept of "recidivism". The term "relapse" comes from the Latin word "recidivus" and determines what is returned, repeated, that is, a repeated manifestation of something. So foreign scientists studied prisons, after which they provided the opportunity to make adjustments to the legislation. Recurrence of crime during the Russian province, identification of the fact that the uneven level of primary and recurrence of crime is associated with economic factors. The history of recidivism during the acquisition of independence was considered, then they drew attention to the scientific developments of V.I. Shakun, during 1990–1996 years. carried out a number of basic thirty-nine studies on the problems of recidivism. Among many useful findings and conclusions, the scientist cited the data we reviewed in the paper. During 2001–2018 years. Systematically analysed data on the regional structure of recidivism in Ukraine, according to which every tenth crime in the country is steadily committed in the Black Sea region. Based on the synthesis of the research results of scientists of past centuries, it was concluded that already in those days scientists paid attention and tried to explain the presence of significant regional, as well as sexual differences in the quantitative and qualitative indicators of relapse crime. These differences are related to differences in the living conditions of the population, the specificity of the psychophysiological qualities of certain categories of people, the peculiarities of the socio-demographic and economic parameters of countries, as well as its territory, features of climate and geographical location, and the like.

Berezhnyuk (Berezhnyuk, 2021) in his dissertation deals with the comprehensive criminal law study of the concept and general criteria of individualization of punishment in sentencing under criminal law of Ukraine. It is established that individualization of punishment is the determination of the type and specific measure of punishment by the court. It is based on the individual degree of seriousness of a criminal offense, personalized qualities of the perpetrator and a number of mitigating and aggravating circumstances aimed at ensuring the goals of general prevention (rectification of social justice) and private prevention (correction of the convict).

Burdega (Burdega, 2018) has presented the criminological characteristics of these crimes, has examined the person who commits relapses, has identified a group of determinants that determine these crimes, has proposed the main directions and measures for preventing recidivism in the specified region of Ukraine. It has been noted that recently in Ukraine, recidivism of criminality is one of the most dangerous types of crime in any regions, which demonstrates the negative tendencies and perspectives of installing certain categories of people to antisocial way of life. The scale of the spread of recidivism in certain areas of Ukraine threatens even the national security of the country and causes a legitimate concern in society and in the state. Particularly acute is the situation with the state of recidivism of criminality in the Black Sea region, in which recidivists commit every tenth offense from all crimes committed in Ukraine.

Podkovenko (Podkovenko, 2020) analyses the current state and dynamics of crime in Ukraine through the prism of the axiological standards of a democratic society. In the conditions of the rule of law, the problem of protecting its citizens from criminal encroachments, as well as counteracting attempts to criminalize society, neutralize negative social trends are of paramount importance. In this context, the issues of combating crime, crime prevention and other offenses, and preventive work with the population are particularly acute. Based on current perceptions of the nature of crime, it is determined that counteracting crime and its manifestations is a system of social and legal efforts aimed at preventing and responding to criminal offenses.

Tymchuk O. L. (Tymchuk ,2012) points out that criminality in Ukraine is caused by a number of criminogenic ones determinants in key areas of public life. In the socio-economic sphere they are: relative poverty, unemployment, including hidden, social inequality, unformed institutions market economy, the negative impact of urbanization; corruption, outright disregard for the law officials at various levels (including senior political leadership),alienation of the population from power, shortcomings in legislation, low efficiency of court and law enforcement agencies; in socio-cultural sphere: anomie, low level of political and legal culture of the population and the ruling elite, legal nihilism, negative the influence of mass culture, the spread of various forms of social pathology.

Golina (Golina et al., 2017) points out that the main features of the public as a subject of crime prevention should include the following: social activity; interest participation in crime prevention measures; focus on protection citizens from criminal encroachments and representation of their interests; carrying out its activities within strict compliance with the current legislation and principles of morality; defined organization and cooperation with other prevention actors. Thus, the study of the public as a subject of crime prevention gives grounds to provide the following definition is a socially active part of society (individual citizens and their associations), interested in participating in crime prevention measures, which voluntarily directs its activities to the protection any member of the community from criminal encroachments and other offenses and acts within the strict observance of laws and principles morality.

Kovalenko (Kovalenko, 2019) analyzes the criminological aspect of preventing crime by the national police of Ukraine in conditions of cooperation with mass media. The concept of crime is investigated and prevented, the essence of activity of the National Police of Ukraine

and mass media is clarified, as well as the possible effectiveness of their cooperation is assess.

Bolibrukh (Bolibrukh & Yakymova, 2020) provides a criminological analysis of the organizational and legal support for the prevention of self-aggrandizing crimes against property by students of the institution of higher education. Emphasis is placed on the peculiarities of educational and preventive work with students of the institution of higher education, which should be taken into account in the development of criminological measures to prevent the perpetration of selfish and violent crimes against property by this category of youth. The gaps and shortcomings of the organizational and legal nature, which do not contribute to the effective prevention of committing self-reported violent crimes against property by the students of the institution of higher education, were identified.

Currently in Ukraine, the Law of Ukraine "On Probation" legally establishes the prerequisites for quality reintegration of convicts into society. Although this law generally meets international standards in the field of probation, it is not without significant shortcomings. In Art. 10 of this Law states that probation programs are implemented for specific persons, but the procedure for their development and implementation is approved by the Cabinet of Ministers of Ukraine.

The resolution "On approval of the Procedure for the development and implementation of probation programs" (On approval of the Procedure for development and implementation of probation programs, 2017), which states that the draft probation program should contain tasks, functions, characteristics of the target group to which such a program is aimed, information about skills and knowledge of the object probation based on the results of the specified program, resources required for its implementation, the content of activities, as well as the procedure for passing the probation program and evaluation of the results of the passage.

Such provisions, on the one hand, are positive, as they allow differentiating probation programs for different categories of convicts. However, the negative is the lack of indications that Ukraine should have a comprehensive recurrence prevention program, and that specific programs should be in line with it. The lack of such a provision indicates a lack of understanding by the legislator of the importance of comprehensive combating crime by reintegrating criminals at the state level, which is an extremely negative phenomenon for the entire criminal law policy.

Today, as the analysis of practice shows, today the probation program is understood as the district sectors of the state institution "Probation Centre" system of classes that are conducted on schedule and aimed at correcting behaviour that contradicts generally accepted norms in society (community). and socially favourable personality changes. At the same time, the current probation programs are "change of pro-criminal thinking", "prevention of the use of psychoactive substances", "overcoming aggressive behaviour", "formation of life skills".

This understanding of probation programs is much narrower than existing international standards for the reintegration of criminals. Therefore, in accordance with the purpose of the article, we will consider possible ways to expand the understanding of probation programs for re-socialization of convicts in order to prevent recurrence.

Thus, international standards provide for the formation of strategies for the reintegration of criminals, which, inter alia, should include: analysis of the problems faced by the offender after release from prison, and ways to solve them; mobilization of available resources and cooperation of various bodies to solve the problems of persons released from prisons; special attention is paid to the needs of women released from prisons, criminals living in rural areas or belonging to national minorities, etc.

At the same time, to be successful, a reintegration program must: reflect public safety priorities; to involve the territorial community both in planning and conducting probation activities; targeting a specific target group of offenders and their specific problems; take into account the specific needs of women; be based on reliable methods of assessing the needs and risk factors of offenders; to promote the development of persons released from prisons, responsibility for their own actions and, if necessary, include sanctions for non-compliance; start as early as possible while the person is in custody and continue throughout the period of the released person's transfer to the community; to promote a balance between monitoring and control, on the one hand, and support and assistance, on the other; provide comprehensive assistance and address many of the interrelated issues faced by persons released from prisons; include the possibility of constant contact with persons released from prisons and have a reliable component of assessment that allows for self-improvement.

That is, the process of developing a program for the reintegration of criminals has three phases: strategic planning of a specific program; its implementation; productivity control. At the same time, successful employment, housing and educational activities have a great positive impact on preventing relapse. Undoubtedly, employment is a key factor in the successful reintegration of former prisoners. Work is more than just a source of income. Employment provides a structure for life and opportunities to contribute to the lives of others, to promote valuable social contacts.

In addition, released convicts tend to return to a community with very limited financial resources, which affects their ability to both obtain and retain employment because of their negative impact on interview attendance, access to work, or the purchase of clothing or tools. Former convicts are also hampered by distrust of employers, lack of qualifications, personal problems (such as alcoholism) or living in areas with very low employment. It is also important to solve the housing problem in time, because the lack of assistance in this case leads to homelessness or living in special institutions among people with similar problems, which increases social isolation.

At the same time, resocialization should include not only assistance but also control. Surveillance in this case is more than just monitoring the offenders' compliance with the conditions associated with their release. This includes managing the risk posed by the offender, purchasing and / or organizing resources to help meet the offender's needs. These measures include acts of observation, training, support, strengthening of positive behaviour and sanctions as a consequence of negative behaviour. Therefore, probation officers often have a dual purpose – to help the detainee meet basic needs and to protect society from the risk of recurrence by a person at risk.

For many offenders, imprisonment is a poor way to prevent recidivism. Instead of imprisoning offenders, non-custodial sentences can be applied in the community and under supervision, which will allow offenders to make other choices, change their lives, and repair the harm done. Unlike imprisonment, non-custodial sanctions are aimed at establishing a relationship between offenders and community members where possible. They seek to strengthen, not break this relationship.

CONCLUSIONS

Today in Ukraine there are such main means of influencing law-abiding behaviour of persons who have committed criminal offenses as: release from probation, parole, replacement of the unserved part of the sentence with a milder one, amnesty and pardon, as well as mechanisms, early removal of a criminal record.

Unfortunately, at this stage it is impossible to talk about a comprehensive approach of the state to relapse prevention due to the existence of effective national programs for its prevention, which are reflected in relevant local programs and, in turn, in individual relapse prevention plans. prevention of new crimes offenders. That is, the process of developing a program for the reintegration of criminals has three phases: strategic planning of a particular program; its implementation; performance control. At the same time, successful employment, housing and educational activities have a great positive impact on preventing relapse.

Ukraine has taken serious steps to implement international standards to prevent recidivism, which is reflected in the adoption and implementation of the Law of Ukraine "On Probation", the adoption of the Cabinet of Ministers of Ukraine from 18.01.2017, which approved the Procedure for developing and implementing probation programs. certain probation programs, such as "change in criminal thinking", "prevention of substance abuse", "overcoming aggressive behaviour", "development of life skills".

At the same time, these programs are in fact training courses that promote the acquisition of a certain skill, but are insufficient for comprehensive changes in the life of a person at high risk of relapse.

Given the dual purpose of probation supervision, which includes managing the risk posed by the offender, purchasing and / or organizing resources to meet the needs of the offender, the latter aspect should be given more attention.

Without diminishing the role of controlling the behaviour of such a person, more attention should be paid to feedback from criminal offenders and help them address issues related to employment, housing and social networks. At the same time, such assistance should be provided not chaotically, but in accordance with scientifically sound, normatively approved national programs developed in accordance with foreign experience and international standards by the best scientists with the active participation of the public.

RECOMMENDATIONS

It is now well known that no crime prevention strategy can be effective without a focus on recidivism. After all, criminal offenses committed by people who have already been

subjected to measures of criminal law influence, and who have proved to be ineffective, are particularly socially dangerous. Their presence characterizes the systemic problems in the application of criminal law, but at the same time pushes scientists to seek new strategies to address such issues. At the same time, the achievements of related sciences on this issue are widely used.

Current international standards for the treatment of convicts include, inter alia, provisions relating to interference with prison activities, including education, training and other programs, as well as the need to ensure that contacts with the outside world are maintained; early release of convicts; providing assistance and support to convicts after release; community involvement in the reintegration process; and standards that encourage the use of NGO programs as an alternative to imprisonment.

At this stage, Ukraine needs to develop a new approach to the prevention of recidivism through the introduction of effective national recurrent crime prevention programs, which are reflected in relevant local programs and, in turn, in individual plans to prevent new crimes designed for specific offenders.

There is a need to implement scientifically sound, normatively approved national relapse prevention programs, developed in accordance with foreign experience and international standards by the best scientists with the active participation of the public.

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YOUNG WRITERS' CORNER

GENDER IDENTITY IN MIKE ROSS'S TRIAL IN THE AMERICAN TV SERIES THE SUITS

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Abstract. Existing literature has provided a firm dichotomy between language differentials between the male and female gender. Regardless of different contexts and discourse types, these language differences tend to persist. In courtroom discourse, the linguistic constructions of female legal practitioners are loosely regarded as 'powerless language' characterized with polite constructions, hesitations, and hedges which is in firm contrast with their male counterparts who tend to be more definite in their linguistic constructions. The present study tends to examine how performed court discourse challenges this narrative. Using selected courtroom scenes of Mike Ross trial in the American TV show the suits, the study notes that while female legal practitioners use these 'powerless' linguistic patterns in the court interaction not as a demonstration of inferior or subordinate status to their male counterparts but dexterously deployed to achieve intended outcomes.

Keywords: Cross-examination, Examination, Court, Gender Identity, Performed Speech

DEFINITION OF TERMS

Hedges: Fraser (2010) sees it as rhetorical device or phrasal constructions that suggest non-commitment to a stated proposition.

Courtroom scenes: Performed acts in the law court involving lawyers, witnesses, judges, and jury.

Gender identity: Representation(s) of individual/people based on societal and cultural factors.

Cross-examination: Interrogating of witnesses by opposing lawyers.

Examination: Interrogating of witness by the supporting lawyer.

INTRODUCTION

Gender is a cultural and sociological construct that has shaped perceptions and attitudes to phenomenon. Interestingly, identity aside reflecting nationality, race, social status, and education is forcibly influenced by the gender construct which explains the inexhaustible theorizing about the way gender influences language use and constructions. Relating to this perspective is Li (2014) who posits that studies on gender and language revolves around three purviews: "gender differences in language, sexism in language, reasons for sexism and gender

differences in language.'' Significantly, these dynamics of gendered linguistic constructions is evident in different social contexts like classroom, business meetings, and courtroom. In the courtroom, the seminal study of O'Barr & Atkins (1980) argued that women language is regarded as 'powerless language' because they are perceived to be subordinate and inferior to men. They note that female witnesses in their study used a lot of hesitations and polite forms more than their male counterparts leading them to arrive at the conclusion that 'gender meanings draw on social meanings.' These theorizing on gendered constructions spurred the assumptions underlying this study that: (a) female texts are characterized with hedging; (b) females hedge to show positive politeness and non-commitment and; (c) female lawyers might avoid confrontations and strong statements in (performed) court scenes.

Lakoff (1975) seminal study explores the linguistic patterns of women speech to include "hesitations, tag questions, intensive adverbs, compound requests, and lack of humour" a loose categorization she called "hedges". Furthermore, she notes that women language is characterized by weaker expletives, and hypercorrect grammar, deliberately done to avoid confrontations and strong statements. These theorizing result in the linguistic construction of 'genderlect' which is a marked use of language characterized by empty adjectives, interrogative forms and questions, polite expressions, hedges, correct grammar, raising pitch at the end of a statement, and use of less taboo words. These linguistic patterns are the reported features of females (Lakoff, 1975). Coates (2004) added to these genderlect features to include minimal responses, yes/no questions, less interruption, less commands / imperative. It is against this backdrop that two studies on gender identity are reviewed. Hirschman (1994) study was experimentally inclined with the aim of identifying the linguistic differences in how male and female interact in conversations. Using 2 males and 2 females in a dyadic conversation that lasted for 60 minutes. The study notes that female speakers use more first person pronominal and limited third person pronominal compared to their male counterparts. Also, they note there is a high occurrence of specific discourse markers (such as fillers: mmm, and hmm) in female speech.

Drawing insights from conversational analysis, the study claimed that females interrupt more, and there are few occurrences of dysfluency in female-to-female interaction. Still in the purview of gender and language, is Zhang & Kramarae (2012) study which investigates the variable of gender in the linguistic constructions of online Urban Chinese women. The participants were college students who participated in three synchronous online focus groups to discuss female-oriented topics in contemporary China. Their findings reported that urban Chinese young women talk is characterized with sharp talk, humor, lady talk, baby talk, and cursing. Sharp talk means a sarcastic manner of speaking used intentionally to appeal to their audience. Lady talk connotes gentle, tolerant, and polite expressions which they regard as the traditional expectations of women's speech. Baby talk means tone and voice similar to little girls with the linguistic manifestation of lengthened vowels and softened consonants which they describe as indirect and informal strategy to influence listeners outside their homes. Cursing is the use of euphemistic expressions that has negative connotations. They note that humour and cursing were socially and culturally termed inappropriate in women's speech. These studies only examined female to female interaction and not female to male interactions which suggest one shortcoming.

Performed or scripted movies and TV series also relate to the discourse on language differentials based on gender especially in the representation of the women language in the courtroom. Buttressing this viewpoint is Holmes & Meyerhoff (2005:56) study which states that "texts are examined for what they reveal, not about the author's gender but about the author's assumptions, about gender or more accurately, about the representation of gender that text offers up." It is against this backdrop that this present study seeks to understand how gender identity is represented in performed and scripted genres using selected courtroom scenes in the TV series Suits. The overarching aim of this study is to investigate how female lawyers use language in performed courtroom scenes.

DATA

The TV series *Suits* is predominately about the legal institution, legal processes, legal tussles, legal representations, and courtroom discourse. The series has nine seasons with each season having not less than ten episodes. The study would restrict itself to Mike Ross court trial with both female and male legal representations. The choice of this court trial is because the decision and verdict of the trial influences the chain of events in the TV series as the person under trial is one of the protagonists in the TV series. The trial is about the crime of forgery leveled on the protagonist for practicing Law without a Law license or degree. In this particular trial, there were different types of interaction within the courtroom. Interaction between lawyers and their opposing counsel; lawyer and the judge; lawyer and the witness, and lawyer and the jury. The only time where there is no dialogue is when lawyers address the jury in their opening and closing statements as the jury are only expected to listen and observe the whole court proceedings before giving a verdict. Thus, the data for this study would be analysed based on all these identified forms of interactions.

THEORETICAL FRAMEWORKS

Hyland's (2005) hedging model is adopted with insight from Fraser (1996) pragmatic markers which would account for the discourse pragmatic implications of the hedges used. Also, insight would be drawn from Schegloff, Jefferson, & Sacks (1977) conversational analysis to account for instances of interruptions, silence, minimal responses, directness, and turn taking. Hyland (2005) model of hedges involves modal auxiliaries, introductory verbs, adjectives classifications (indefinite, frequent, approximate etc), adverbs, and noun classifications (such as tentative cognition noun, nouns of tentative likelihood, and non-factive associative nouns).

Insights form Fraser (1997) involves examining the frequencies of if clauses, subjectivity markers, downgraders, tentativizers and performative hedges in the data. Hyland (2005) model of hedging includes modal auxiliaries as he argues that these auxiliaries especially will, can, may, could express uncertainty, likelihood, and probability which suggests the speaker's non-commitment to the expressed propositions. He went ahead to enumerate the different content words that are used to show hedged constructions. He notes that verbal items like claim, propose, suggest, imply are non-factive assertions that express likelihood and indefiniteness. Similarly nouns such as proposition, assumption, possibility is either non-

factive assertive nominals or tentative cognition nouns that suggest likelihood. Furthermore, he identified numerous adverbs and adjectives that constitute hedged constructions which express probability, indefiniteness, and mitigated force: frequently, perhaps, possible etc. These examples would be examined in the performed courtroom scenes. In the analysed performed courtroom discourse, hedged constructions come in different forms:

Constructions of likelihood:

Is it true, is it also true, isn't it possible, is it at all possible, is it correct, do you find it suspicious, it is likely, it looks like

From these hedged constructions the female lawyer drastically, mitigated commitment to the proposition but used these phrases and multiword constructions to convey tentativeness, indefiniteness, likelihood, and probability. In other words, the female counsel was careful not to make conclusive and committing assertions when cross-examining and examining witnesses.

Non-factive verbal and nominal assertions:

He claims *to have attended Harvard Law, You mean he never graduated from college,* ***You mean*** *he was someone else,* ***I think*** *we have heard all we need to hear.*

I happen *to be familiar with your son's case.*

I understand *that in order to reopen this case Mr. Ross risked increasing his sentence to life.*

I think *everybody in this courtroom know how they will feel.*

IF Conditional:

If he was a college graduate, if you are so good at your job, if that happened, how would you have felt, If you found out that Mr. Ross wasn't even a lawyer after all, If you acquit him, If you believe his testimonies. If you believe his testimony, I got a bridge over Brooklyn I will like to sell to you.

Loaded hedged constructions:

If you believe his testimonies I got a bridge over Brooklyn I would love to sell you.

This construction contains indirectness realized through the 'if conditional sentence.' Also, the modal auxiliary would express the uncertainty in the female lawyer speech. Thus, this whole construction is an example of metaphoric construction of indirectly avoiding explicit commitment to the stated proposition(s).

Modal auxiliaries hedged constructions:

May I remind you that perjury carries up to a sentence of five years.

Adverbs as forms of hedges:

According to Hyland (2005) adverbs such as almost expresses approximation to the force of the verb which introduces tentativeness.

I almost wanted to let him go.

Other hedged expressions:

It is my understanding, to the best of your knowledge

These expressions are subtle ways the female lawyer evades being definite. Using the construction 'it is my understanding' conveys a sense of probability, and likelihood. Also, using the construction 'to the best of your knowledge' the lawyer shifts commitment to the proposition to the witness which is a strategy of shifting responsibilities without being definite and exact.

The data is also analysed based on the different forms of interactions in the courtroom discourse.

INTERACTION BETWEEN FEMALE LAWYER AND OPPOSING MALE COUNSEL

There was the use of interruption and direct statements by the female lawyers. This conversational and discourse strategies contravene existing literature (Lakoff, 1975) theorizing that females are powerless in their use of language. There was no instance of hedges but explicit conveyance of direct illocutionary force and attitude. However, this conversational pattern is a marked instance of women's use of language which demonstrates the expression of a new women identity who wields unlimited power and can challenge authorities even in institutional settings such as the courtroom. The predominant strategy was the use of rhetorical questions which represents being armed with power as lawyers only demonstrate power in the court through the use of questions (as they are the only individuals entitled to ask questions in the court), hence, for her to use her power through her use of interruptions and questions (on her male colleagues) suggests the awareness of the power she possess and utilizing it to the fullest.

LAWYER AND WITNESS (FEMALE WITNESS 1) (CROSS EXAMINATION)

There are uses of hedges in the utterance of the female lawyers when they speak to witnesses from the opposing side. The use of hedges might also be because she is speaking to another woman and thus uses the 'women language' not necessarily to show dominance but mitigate control and achieve mutual cooperation. The lawyer uses hedged linguistic constructions throughout this interaction to show politeness and demonstrate how the gender of the addressed influences the use of language. Examples of this include:

I happen *to be farmiliar with our son's case.*

I understand *that in order to reopen it, Mr. Ross risked increasing his sentence to life*

I think *everybody in this courtroom knows…*

The above sentences demonstrate a hedged manner of conveying a proposition without showing commitment. These hedged constructions show an indirect way women use language which subtly conveys uncertainty. The underlined verbs are examples of Hyland (2005) introductory verbs used to convey tentativeness and indefiniteness.

FEMALE WITNESS 2 CROSS-EXAMINATION

Its my understanding *that you arranged for Mr. Specter to interview for the position currently filled by Mike Ross. Is it correct?*

Do you find it suspicious *that Mr Ross was not listed on Harvard class ranking in his 1st year?*

If you are so good at your job*, how will you allow someone who isn't to the interview to get a room alone with Harvey Specter?*

Now ***we*** *have established that Mike Ross is an imposter and* ***we*** *are going to find out if you are a liar.*

Don't feel bad Ms. Paulsen*,* ***I feel*** *others will do the safe thing too.*

Ms. Paulson, ***to the best of your knowledge*** *did Mike Ross go to Harvard Law school or not?*

The witness would be excused Your Honour! ***I feel*** *we have heard what we need to hear.*

The line of questioning in this interaction suggests non-commitment and uncertainty. Also, there were indirect ways of conveying insults through the use of the IF conditional construction. Similarly, there is the use of the inclusive pronoun 'we' to avoid direct commitment to propositions and the use of hedged verbal constructions which according to Hyland (2005) is deployed by the female lawyer to show politeness and empathy to the female witness.

CROSS EXAMINATION OF MALE WITNESS

In this specific interaction, the lawyer was direct and maximally exploits her power through her line of questioning. However, there are still instances of indirectness and hedging as used in the bolden examples which represents tag questionings (introductory hedged strategies following Hyland, 2005).

Isn't it true *that 2 days ago Mr. Ross contacted you on the street outside of your office?*

Is it also true *that Mike got your aunt a large settlement several months ago and if he gets convicted* ***it is likely*** *that the settlements get overturned.*

But you are lying because the person saying the truth won't say they not lying at all. (direct).

Your honour I have had enough of this witness, he is excused and the prosecution rests. (direct).

EXAMINATION OF WITNESSES

There was use of explicit hedging and indirectness because the female lawyer is interrogating her own witness (a male) as seen thus:

Oh wait, I am confused, why would he have to resort to that if he was a college graduate

Wait you mean he never graduated from college?

Is it at all possible that Mike Ross ever attended Law school?

This is an explicit demonstration of hedging as the direct conveyance of these questions would be: Is he a college graduate? Did he attend law school? Using such hedged construction is a female's way of not showing commitment to the proposition (Lakoff, 1975).

INTERACTION WITH THE JURY

The explicit demonstration of hedges and indirect language is demonstrated when the female lawyer addresses the jury who are the people that issue the verdict. Hence, she utilizes all their 'women language' to sway the emotions of the jurors to decide in her favour. In this interaction, the lawyer also uses discourse markers to show uncertainty as seen below:

Well it is an interesting thing, really how criminals can play with our emotions

In the expression, the use of the discourse marker 'well' suggests hesitation and uncertainty to the next statement to be said. The lawyer did not explicitly call the accused a criminal but indirectly suggested that. Also, the female lawyer constantly uses exclusivity to show non-commitment and the use of subjectivity markers through the use of the phrasal construction 'I think'.

Listening to his closing argument I almost want to let him go myself
I think I am gonna I am gonna pretend to be a lawyer
Mike Ross thinks he is better than you
He thinks he doesn't have to play by the same rules

DISCOURSE MARKERS IN THE COURTROOM SCENES

Drawing insights from Fraser (1996) categorization of discourse markers which include: topic change marker, contrastive marker, elaborative marker, and inferential marker. These markers are closely linked to power and domination in conversations as it is used by those in power (through turn taking and interruptions) to direct the narratives and events in a conversation.

In the performed courtroom scenes, the female lawyer uses these markers:
So *Trevor could lie but you won't lie from your end. (Topic change marker)*
So *Ms Paulsen to the best of your knowledge (Elaborative marker)*

INSIGHTS FORM CONVERSATIONAL ANALYSIS

Throughout the trial the instances of interruptions were from the female who interrupted the defense lawyer more than three times. Such conversational strategy suggests power and willingness to take turns without waiting for turn allocations. Also, silence was mostly displayed by the judge (female) whenever the female counsel interrupts. This conversational strategy might affirm the 'powerless women language' as the judge always rules in the favour of the male counsel when they are interrupted. The language of the female lawyer to opposing counsel was marked with directness and use of interrogatives. Overall, the statements of the female lawyer were not characterized with pauses, hesitations, stammers which are conversational features of powerless participants. Thus, there seems to be a revamp of the perception of gender identity in these interactions as the female lawyer was being direct and confrontational in the courtroom. Instances of direct language are:

What?
Co counsel? What planet are you on?
I want them waiving all rights to a mistrial and I want it on record.
He is a liar
He did not go to college
There is no record of his enrollment, no applications to Law school…
He didn't commute to Harvard one day a week as he laughably ***claims***
Mike Ross is a fraud
Did he say he was someone else?
Are you going to recant your testimonies?

The only instance when the lawyer was polite was when addressing the judge through the use of the honorific 'Your honour'

DISCUSSION AND CONCLUSION

The female lawyer use of hedges is done nebulously and dexterously as a face protection strategy to disclaim responsibility and subtly emphasize non-commitment to the validity of a proposition which is needed in the adversatorial/adversarial legal system. Thus, the hedged constructions used were to subtly convey shared knowledge and gain reassurance on the validity of a statement. Expressions like 'it is true' 'claim' 'isn't it possible' 'I think' 'Is it correct' are strategies of indirectness and hedges although, the phrasal construction 'I think' seems to be the most prevalent hedging strategy. From the analysed data, female lawyer hedged to achieve linguistic imprecision although this was done confidently.

Hedge is a flexible resource used not necessarily to signal powerlessness but to achieve intended outcomes thus, hedged constructions are context dependent in terms of sociolinguistic interpretations. Hedges though used by the female lawyers as 'verbal fillers' to allow for 'linguistic planning time' is also used for 'intratextual coherence function' to yield the floor in addition to being used as an 'interactive pragmatic device of inviting the addressee' into the conversations. However, these hedged constructions demonstrate the female lawyer confidence of alluding specifically to the context of the utterance.

In conclusion, while performed and scripted use of language might not reflect spontaneous and natural linguistic phenomenon. Performed acts also represent instances of language use because movies' propensities of influencing individual beliefs and values are enormous (Cape, 2003).

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4th INTERNATIONAL SCIENTIFIC AND PRACTICAL CONFERENCE AND INTERNATIONAL INTERNSHIP "SINGLE EDUCATIONAL SPACE IN THE CONDITIONS OF DIGITAL TRANSFORMATION" SEPTEMBER 17-25, 2021, Poreč-Rijeka, CROATIA

In the framework of the development of international relations, JURAJ DOBRILA UNIVERSITY OF PULA (CROATIA) together with PAR UNIVERSITY (CROATIA), National Aviation University, UNIVERSITY OF PRIMORSKA, FACULTY OF EDUCATION (SLOVENIA), E-SCIENCE SPACE (POLAND) AND CENTER FOR STRATEGIC INNOVATION AND PROGRESSIVE DEVELOPMENT (UKRAINE) conducted an International Internship and the IV International Scientific and Practical Conference "SINGLE EDUCATIONAL SPACE IN THE CONDITIONS OF DIGITAL TRANSFORMATION" in Croatia. It is the first and only scientific conference uniting the scientific community of Ukraine and the EU, which has been held in Poreč (Croatia) since 2018.

The relevance of the chosen issues for the scientific and practical conference is beyond any doubt, as the socio-economic transformations, legal, judicial and administrative reforms initiated in the country should be based on modern methodological and theoretical principles of educational services considering transformational changes in the post-Covid world.

Representatives of educational institutions of Ukraine, Croatia, Slovenia, Poland, Bulgaria, as well as local authorities, including the mayor of Mošćenička Draga, Riccardo Staraj, Croatia, attended the conference.

Welcoming remarks were made by the Vice-Rector for International Affairs Valter Boljunčić on behalf of the Rector JURAJ DOBRILA UNIVERSITY OF PULA (CROATIA). He noted that the interaction of education and science was a complex process in which universities traditionally played a leading role. At the same time, the educational process and the conduct of scientific research are interrelated and ensure the unity of the acquisition and transfer of knowledge. One of the main principles of the European educational space is education based on scientific research. The chosen topic of the scientific and practical conference is a good opportunity for a scientific debate, during which it is advisable to discuss the challenges of the modern world, to develop scientifically and legally sound recommendations for improving the distance learning system.

The dean of the Faculty of Law, Iryna Sopilko, performed with a welcoming speech and noted that today, it is extremely important to realize the need for radical change not only in the social or economic space, but above all in the single educational space with Europe (the internship program https://internships.com.ua/program/).

Welcoming speeches were also made by:

JURKI LEPIČNIK VODOPIVEC, prof.dr.sc., Kopar na Pedagoški fakultet prodekanici, Slovenia (online)

MARKO PERIC, Vice Dean for International Affairs, the Faculty of Tourism and Hospitality Management, University of Rijeka (UNIRI), Croatia

LINDA JURAKOVIĆ, Dr.doc. sc., Sveučilište Jurja Dobrile u Puli, Pula, Croatia

OLEH YAROSHENKO, Doctor of Law, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine, Vice-Rector for Educational and Methodological Work, Yaroslav Mudryi National Law University, Ukraine

TETIANA YAROSHENKO, PhD, History, Associate Professor, Vice President for Research and IT (National University of Kyiv-Mohyla Academy), Ukraine

BADRI GECHBAIA, Doctor of Economics, Batumi Shota Rustaveli State University, Associate Professor, Head of the Research Center of Batumi Navigation Teaching University, Batumi, Georgia (online)

VIKTORIIA SYDORENKO, Doctor of Education, the Director, the Bila Tserkva Institute of Continuing Professional Education, Ukraine

JOANNA OSIEJEWICZ, International Legal Communication Research Center, PhD with habilitation (Law), PhD (Applied Linguistics), University of Warsaw, Vice-Rector's Proxy for International Cooperation at the University of Warsaw, Poland (online)

ALEVTINA BAHCHEVAN, Association of International Training and Internship, Bulgaria (online)

MARYNA DEI, PhD in Law; Associate Professor (National Aviation University, Center for Strategic Innovation and Progressive Development), Ukraine

The program of the event was planned for several plenary days, from 17 to 25 September. The program covered topics related to management in business, education, sports, tourism and other fields of knowledge. A separate training unit included trainings on profiling, public speaking and prevention of procrastination.

The event was attended by the best European and Ukrainian experts, leaders and their deputies, deans, university professors, national consultants and students who gathered in one place and participated in various programs and interactive panels, discussions and seminars.

According to the results of the discussion, all participants concluded that the most important stage in the improvement of a single educational space is the development of educational programs that will be integrated into the requirements of the European economy and aimed at developing Ukrainian society.

The international conference and internship took place at a high organizational and scientific level. The chosen topic of the scientific and practical conference served as a fruitful basis for the exchange of views on the said issues. Due to the relevance of the questions raised at the conference, the International peer-reviewed co-authored monograph «SINGLE EDUCATIONAL SPACE IN THE CONDITIONS OF DIGITAL TRANSFORMATION» (Polish edition, ISBN) https://internships.com.ua/opublikovana-monographiya/ was published.